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Wednesday
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Presidential Documents

Title 3—

The President

Proclamation 5537 of October 6, 1986

National Drug Abuse Education and Prevention Week and National Drug Abuse Education Day, 1986

By the President of the United States of America

A Proclamation

Drug abuse is a veritable plague that enslaves its victims, saps their health, turns their dreams to dust, and endangers their lives and the lives of others. Unchecked, it poses a threat to our Nation. But Americans are fighting back against this insidious evil. More and more young people are choosing to "Just Say No" to drugs. This heartening development is due to the tireless efforts of concerned parents, private sector organizations, schools, and State and Federal government.

We cannot afford to slacken in our efforts when nearly two-thirds of all American teenagers have used an illicit drug at least once before they finish high school. Especially disturbing is the level of cocaine use among teenagers and young adults in our country.

Cocaine is especially dangerous because people tend to underestimate its harmful effects. Cocaine must be recognized for what it is: a dangerous, addictive drug. Cocaine can kill: deaths from respiratory and cardiac arrest from cocaine overdose are increasing among all age groups. Recently there has been a frightening upsurge in the use of "crack," a form of cocaine that is smoked. "Crack" reaches the brain within seconds, producing a sudden and intense high and a fierce craving to use it again and again, a phenomenon that has been called "instant addiction."

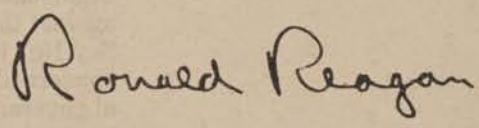
The most effective weapon we have against drug abuse is to dry up demand by spreading knowledge about its ruinous effects. Across the country, individuals and organizations have discovered the power of united action. The "peer pressure" that so often has been used to snare the unwary into "experimenting" with drugs is now being used to build resistance. Youth-led groups are in the forefront of our national crusade to rid our country of this evil. The vigorous action of parents, religious and community leaders, teachers, doctors, counselors, and young people themselves with their commitment of time, energy, and love, has been an inspiration to all of us. Public education media campaigns have also been effective in motivating people to "Just Say No." A major portion of the Federal drug abuse prevention effort is directed toward continued research into the deleterious effects of drugs and getting this information out to those who can use it most effectively.

Our society at every level must develop an absolute intolerance for illegal drugs. Everyone has a part to play in this crusade: parents, teachers, health care professionals, youth workers, and celebrities in entertainment, sports, and other fields. All America must speak with one voice. We must teach our young people to say "no" to the degradation of drugs and "yes" to the bright promise of a drug-free America. This is a battle for liberty from the enslavement of drug addiction. We can win. We must win. With God's help and a united people, we shall win.

The Congress, by Senate Joint Resolutions 354 and 386, has designated the week of October 5 through October 11, 1986, as "National Drug Abuse Education and Prevention Week," and October 6, 1986, as "National Drug Abuse Education Day," and authorized and requested the President to issue a proclamation in observance of these events.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 5 through October 11, 1986, as National Drug Abuse Education and Prevention Week, and October 6, 1986, as National Drug Abuse Education Day. I call upon the people of the United States to participate in drug abuse education and prevention programs in their communities. I encourage parents and children to talk and work together to prevent drug abuse in the family and to dedicate themselves to the goal of a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of Oct., in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 86-22955
Filed 10-6-86; 4:16 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks about National Drug Abuse Education and Prevention Week, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 41).

Presidential Documents

Memorandum of October 6, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the Government of Brazil has engaged in acts, policies, and practices with respect to informatics products that are unreasonable and burden or restrict United States commerce. With a view toward eliminating the harmful effects of the Government of Brazil's acts, policies, and practices, I am directing you as the United States Trade Representative to continue negotiations to address U.S. concerns regarding barriers to U.S. trade and investment and the lack of adequate and effective intellectual property protection. To allow further time for negotiations and for monitoring of commitments already made by the Government of Brazil, I will defer a final decision as to the appropriate U.S. response to the Brazilian acts. policies, and practices until December 31, 1986. In the interim, however, I am directing the United States Trade Representative to notify the GATT of our intent under GATT Article XVIII(21) to suspend the application of U.S. tariff concessions to imports from Brazil to compensate for the annual loss in U.S. sales opportunities in Brazil due to the informatics policy and to implement such suspension when appropriate.

Reasons for Determination

At my direction, the United States Trade Representative self-initiated a Section 301 investigation on September 16, 1985, of a Brazilian law and policies that have restricted U.S. trade and investment in the informatics sector and have withheld adequate and effective intellectual property protection for U.S. computer software and other informatics products.

The Section 301 investigation has focused on Law No. 7.232 of October 19, 1984 ("Informatics Law"). This law codified and strengthened the Government of Brazil's authority to regulate informatics trade and investment. Pursuant to the authority granted by this law, the Government of Brazil or its instrumentalities have engaged in acts, policies, and practices designed to restrict foreign competition and to promote the development of a "national" informatics industry.

Pursuant to Article 9 of the Informatics Law, the Government of Brazil's Special Secretariat for Informatics ("SEI") has restricted the importation of informatics products covered by the "market reserve" policy, including a number of U.S. computer and computer-related products. In addition, SEI has used its authority under the so-called "Law of Similars" to restrict the importation of a broad range of U.S. products that incorporate digital technology.

The Government of Brazil prohibits subsidiaries of U.S. firms from manufacturing in Brazil informatics products covered by the market reserve policy. In addition, SEI has used its authority under the Informatics Law to restrict the activities of U.S. firms with investments in Brazil and to impose severe local content and export performance requirements. In certain cases, SEI has used its authority to regulate foreign investment to force out U.S. informatics firms with operations in Brazil.

Finally, the Government of Brazil currently withholds full copyright protection to computer software. As a result, U.S. firm have suffered heavy losses from software piracy.

The Government of Brazil's acts, policies, and practices have resulted in a rapid and unchecked proliferation of restrictions on U.S. informatics and related products. These policies have resulted in extensive lost sales to U.S. companies in the hardware and software sectors and burden or restrict U.S. commerce within the meaning of Section 301.

While I have determined that the Government of Brazil's informatics law and policies are unreasonable under Section 301, I would strongly prefer that the Government of Brazil agree to moderate or eliminate the effects of its barriers to trade and investment and establish adequate and effective protection for intellectual property rights. Our goal under Section 301 is to open foreign markets to U.S. trade and investment, not to close our own market to imports. Accordingly, I have directed the United States Trade Representative to redouble our efforts to reach an expeditious, negotiated resolution of this issue.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 6, 1986.

[FR Doc. 86-22977
Filed 10-7-86; 11:48 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of October 6, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the agreement between the Governments of Japan and the United States of America is an appropriate and feasible response to the policies and practices of the Government of Japan with respect to the manufacture, importation and sale of tobacco products in Japan. These policies and practices have been investigated by the United States Trade Representative in response to his initiation of an investigation on September 16, 1985, at my direction.

I direct you as the United States Trade Representative to notify the Government of Japan of my approval of the agreement and to take any actions necessary to implement and monitor it. Since the Government of Japan must take steps to implement the agreement, I direct that the Section 301 proceeding on Japan's practices with respect to manufactured tobacco products be suspended until the agreement is fully implemented, at which time I direct you to terminate the proceeding.

Reasons for Determination

For years the United States Government has expressed concern about the Government of Japan's trade barriers that have unfairly restricted American cigarette producers' access to the Japanese market. Despite some improvements, the market share of U.S. cigarette exporters in Japan remains less than three percent despite their competitiveness. Looked at as a whole, the Japanese Government's laws, policies and practices insulate an inefficient monopoly from competition and shift to imports and Japanese consumers the costs of maintaining a highly uncompetitive domestic tobacco leaf industry. The specific unfair Japanese Government practices include: (1) the combination of a significant trade barrier (a 20 percent tariff and a high, largely *ad valorem*, excise tax) and an unreasonable, absolute investment barrier (a manufacturing monopoly), (2) the current discriminatory deferral of excise tax payment favoring the Japanese tobacco monopoly, (3) a price approval system that protects the Japanese tobacco monopoly against foreign competition, and (4) discriminatory or unreasonable practices by the government-controlled distribution instrumentality. All of these unfair practices burden or restrict U.S. commerce.

Representatives of the Governments of Japan and the United States held a series of consultations concerning increased access to the Japanese cigarette market. As a result of these consultations, we reached an agreement regarding actions that Japan will take to improve our firms' access. The Government of Japan will suspend the tariff, reducing it to zero. It also will end the discriminatory deferral of excise tax payment by its tobacco monopoly by April 1, 1987, and modify its price approval system to shorten the application period

significantly and to make the process transparent and virtually automatic. In addition, the government-controlled distribution instrumentality has statisfactorily addressed the major existing distribution problems. When implemented, these measures should accomplish our goal of obtaining increased access for U.S. firms to Japan's cigarette market.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 6, 1986.

[FR Doc. 86-22978
Filed 10-7-86; 11:49 am]
Billing code 3195-01-M

Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0, 1, 9, 10, 14, 51, and 110

Nomenclature Changes To Implement Consolidation of OGC and OELD

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the changes resulting from the Commission decision to consolidate the Office of the Executive Legal Director into the Office of the General Counsel. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Barry Pineles, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7688.

SUPPLEMENTARY INFORMATION: On July 1, 1986, the Nuclear Regulatory Commission decided to consolidate its two legal offices, the Office of the Executive Legal Director and the Office of General Counsel, into one legal office—the Office of the General Counsel.

The Nuclear Regulatory Commission is amending portions of its regulations to substitute references to the Office of the General Counsel in lieu of the Office of the Executive Legal Director. In addition, the Nuclear Regulatory Commission is amending portions of its regulations to delete references to the Office of the Executive Legal Director. The amendments also will describe the new structure of the Office of the General Counsel and its subsidiary divisions.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of agency conduct, the consolidation of two legal offices into one office.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0043 (Part 9), 3150–0021 (Part 51), and 3150–0036 (Part 110).

List of Subjects

10 CFR Part 0

Conflict of interest, Penalty.

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 14

Administrative practice and procedures, Tort claims.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is publishing the following amendments to 10 CFR Parts 0, 1, 9, 10, 14, 51, and 110.

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 0.735–28, paragraph (a)(2), is revised to read as follows:

§ 0.735–28 Confidential statements of employment and financial interests.

(a) * * *

(2) All contracting officers in the Office of Administration, and all attorneys in the Office of the General Counsel (including those employees being paid below the GG–13 level).

* * * * *

PART 1—ORGANIZATION

3. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In the Table of Contents in Part 1, remove § 1.42.

5. Section 1.32 is revised to read as follows:

§ 1.32 Office of the General Counsel.

(a) The Office of the General Counsel directs matters of law and legal policy, providing opinions, advice and assistance to the NRC with respect to all of its activities; reviews and prepares appropriate draft Commission decisions on Atomic Safety and Licensing Appeal Board decisions and rulings, public

petitions seeking direct Commission action, and rulemaking proceedings involving hearings; provides interpretation of laws, regulations, and other sources of authority; reviews the legal form and content of proposed official actions; prepares or concurs in all contractual documents, interagency agreements, delegations of authority, regulations, orders, licenses, and other legal documents and prepares legal interpretations thereof; reviews and directs intellectual property work; represents and protects the interests of the NRC in legal matters and in court proceedings, and in relation to other government agencies, administrative bodies, committees of Congress, foreign governments, and members of the public.

(b) The Office of the General Counsel is directed and supervised by the General Counsel who is the chief legal officer and legal advisor to the NRC. The General Counsel is assisted in carrying out the functions of the office by the Deputy General Counsel and by the following:

(1) The Solicitor assists the General Counsel in all aspects of his or her role as the chief legal officer and legal advisor to the NRC with primary responsibility in matters involving the supervision of litigation in courts of law; represents the NRC in litigation before the Federal courts of appeals and, in conjunction with the Justice Department, in other Federal courts; provides counsel to NRC employees called to testify concerning official duties in cases to which the NRC is not a party; and advises the Commission on litigation implications of proposed actions.

(2) The Associate General Counsel for Licensing and Regulation advises the General Counsel and the Commission on all aspects of domestic licensing and regulation with particular emphasis on adjudication, legislation, rulemaking and fuel cycle matters; and provides advice on employee conduct and administrative law issues, and on the implementation of atomic energy and environmental laws.

(3) The Associate General Counsel for Hearings and Enforcement advises the General Counsel and the Deputy General Counsel, as appropriate, on all licensing, inspection and enforcement activities, with particular emphasis on the conduct of adjudicatory hearings and the implementation of the Commission's enforcement program; and assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advise on interagency and international agreements, procurement, intellectual property, security, personnel, and administrative functions.

(4) The Assistant General Counsel for Adjudications and Opinions assists the General Counsel in providing legal advice and assistance to the Commission in the review of adjudicatory decisions and on the implementation of employee conduct regulations; and provides legal advice and assistance to the Office of Investigations.

(5) The Assistant General Counsel for Rulemaking and Fuel Cycle assists the General Counsel in developing and reviewing NRC regulations and guides pertinent to the licensing and construction of nuclear facilities and the use of nuclear materials; represents the NRC staff in public rulemaking hearings; interprets regulations and statutes relevant to NRC activities; provides legal analyses of authorities affecting the NRC.

(6)(i) The Assistant General Counsel for Hearings assists the Deputy General Counsel in the development of legal policy; represents the NRC staff in public hearings conducted in conjunction with the licensing of nuclear users and facilities and assists in the development of legal policy associated with such licensing; and provides advice and consultation to the staff on health and safety and environmental issues arising from the licensing process.

(ii) The Assistant General Counsel for Hearings also represents the NRC staff in public administrative proceedings before the Commission, Atomic Safety and Licensing Appeals Boards, Atomic Safety and Licensing Boards, and administrative law judges in matters relating to antitrust aspects of applications for nuclear facility licenses; provides legal advice regarding NRC antitrust responsibilities; and for operating license antitrust reviews, together with the Antitrust and Economic Analysis Branch of the Office of Nuclear Reactor Regulation, recommends to the appropriate Office Director (Nuclear Reactor Regulation or Nuclear Material Safety and Safeguards) whether or not a finding of significant changes should be made.

(7) The Assistant General Counsel for Enforcement assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advice and assistance to the Commission, all Regional Offices, and the Offices of Inspection and Enforcement, Nuclear Material Safety and Safeguards, and Nuclear Reactor Regulation on inspection and enforcement matters; and assist the Deputy General Counsel in advising and representing NRC offices in enforcement proceedings against licensees involving imposition of civil penalties, modifications, suspension or revocation of licenses.

(8) The Assistant General Counsel for Administration assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advice and assistance to NRC offices involved in interagency and international agreements, procurement, intellectual property, budget, security, and administrative functions; represents NRC in administrative hearings involving procurement, personnel, personnel security, labor relations, and equal employment opportunity matters.

6. Section 1.40 is amended by removing the words "the Office of the Executive Legal Director," in paragraph (b) and by revising paragraph (n) to read as follows:

§ 1.40 Office of the Executive Director for Operations.

* * * * *

(n) Exercises final determination on appeals under the Freedom of Information Act except for those pertaining to advisory committees, boards, panels, and offices reporting to the Commission.

* * * * *

§ 1.42 [Removed]

7. Section 1.42 is removed and reserved.

§ 1.61 [Amended]

8. In § 1.61, paragraph (e), remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

PART 9—PUBLIC RECORDS

9. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 9.3a, paragraph (a) is revised to read as follows:

§ 9.3a Definitions.

As used in this subpart:

(a) "Office", unless otherwise indicated, means all offices and divisions of the NRC reporting to or through the Executive Director for Operations.

* * * * *

§ 9.8 [Amended]

In § 9.8, paragraph (e) introductory text, remove the words "Executive Legal

Director" and add, in their place, the words "General Counsel".

§ 9.9 [Amended]

12. In § 9.9, paragraphs (a) and (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

§ 9.15 [Amended]

13. In § 9.15, paragraph (a), remove the words "and the Office of the Executive Legal Director".

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

14. The authority citation for Part 10 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR Parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4.

§ 10.5 [Amended]

15. In § 10.5, paragraph (c), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

§ 10.22 [Amended]

16. In the introductory paragraph of § 10.22, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of General Counsel".

§ 10.24 [Amended]

17. In § 10.24, paragraph (a), remove the words "Executive Legal Director" and add, in their place, the words "the General Counsel".

PART 14—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

18. The authority citation for Part 14 continues to read as follows:

Authority: Sec. 1, 80 Stat. 306 (28 U.S.C. 2672); sec. 2679, 62 Stat. 984, as amended (28 U.S.C. 2679); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); 28 CFR 14.11.

§ 14.15 [Amended]

19. In § 14.15, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

20. Section 14.33 is revised to read as follows:

§ 14.33 Officials authorized to act.

The General Counsel or the General Counsel's designee shall exercise the authority to adjust, determine, compromise and settle a claim under the provisions of 28 U.S.C. 2672.

§ 14.35 [Amended]

21. In § 14.35, paragraph (b) introductory text, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

§ 14.51 [Amended]

22. In § 14.51, paragraphs (a) and (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel"; and remove paragraph (c).

23. Section 14.53, is revised to read as follows:

§ 14.53 Scope of employment report.

A report containing all data bearing upon the question whether the employee was acting within the scope of his or her office or employment will be furnished by the General Counsel or designee to the United States Attorney for the district encompassing the place where the civil action or proceeding is brought. A copy of the report also will be furnished to the Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within the time specified by the United States Attorney.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

24. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

25. In § 51.4, the definition of "NRC Staff director," is revised to read as follows:

§ 51.4 Definitions.

As used in this part:

* * * * *

"NRC Staff Director" means:

Executive Director for Operations;

Director, Office of Nuclear Reactor Regulation;

Director, Office of Nuclear Material Safety and Safeguards;

Director, Office of Nuclear Regulatory Research;

Director, Office of Inspection and Enforcement;

Director, Office of State Programs; and

The designee of any NRC staff director.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

26. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 110.89 [Amended]

27. In § 110.89, paragraph (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

Dated at Bethesda, Maryland, this 26th day of September, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–22838 Filed 10–7–86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 30, 40, and 70

Regional Nuclear Materials Licensing for the United States Air Force

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulation concerning the domestic licensing of source, byproduct, and special nuclear material (collectively referred to as nuclear materials) to provide for further decentralization of the NRC licensing process. This amendment extends to the Region IV Office the same authority for the United States Air Force license as they now possess for nearly all other Federal activities.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Chief, Material Licensing Branch, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4002.

SUPPLEMENTARY INFORMATION: Each year since 1982 (May 27, 1982; 47 CFR 23138) (April 14, 1983; 48 FR 16030) (May 9, 1984; 49 FR 19630) (April 15, 1985; 50 FR 14692), the Nuclear Regulatory Commission (NRC) published rules decentralizing most licensing of nuclear materials. The NRC is amending its regulations to include the United States Air Force license in its decentralization program.

The NRC recently consolidated approximately 70 individual United

States Air Force licenses into one "master" license with many individual permits. During the consolidation and for a short time after it, Headquarters retained the regulatory authority for the Air Force licensing effort to maintain continuity. NRC Headquarters is now prepared to transfer this authority to the appropriate Regional Office, consistent with a similar delegation which affected nearly all other Federal licenses in 1985.

With respect to licenses issued pursuant to 10 CFR Part 30 through 35, 40, and 70, revisions to 10 CFR 30.6, 40.5 and 70.5 would require the Air Force to contact the appropriate Regional office, rather than NRC Headquarters offices, for license applications, renewals, and revisions. This action now incorporates the U.S. Air Force license into the NRC Regional materials licensing program.

The only Federal licensee not included in the decentralization program is the United States Navy. Navy submittals under Parts 30 through 35, 40 and 70 will continue to be sent to the Office of Nuclear Material Safety and Safeguards (NMSS). These licenses have not been included because the Navy is currently in the process of submitting a proposal for a "master" materials license with the NRC, which would, if approved, consolidate over one hundred individual licenses into one license. Following this consolidation, it is intended that the licensing authority for the Navy also will be delegated to the appropriate Region.

Delegations of authority to the Regional Administrator are contained in NRC Manual Chapter 0128. The changes to §§ 30.6, 40.5, and 70.5 are nonsubstantive amendments. The revised sections indicate the type of licensing authority delegated to the Regional Administrator.

Because these are amendments dealing with Agency practice, procedure, and organization, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective October 1, 1986. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of Agency practice that for administrative convenience should begin with a new fiscal year.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i). Accordingly, pursuant to 10 CFR 51.22(b), neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C.3501 et seq.). existing requirements were approved by the Office of Management and Budget approval numbers 3150–0017 for Part 30, 3150–0016 for Part 31, 3150–0001 for Part 32, 3150–0015 for Part 33, 3150–0007 for Part 34, 3150–0010 for Part 35, 3150–0020 for Part 40, and 3150–0009 for Part 70.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 30, 40, and 70 are published as a document subject to codification.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34 (b) and (c), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.6, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended [42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2236, 2282]; sec. 274, Pub. L. 86–373, 73 Stat. 688 [42 U.S.C. 2021]; secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 [42 U.S.C. 5841, 5842, 5846]; sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 [42 U.S.C. 2022].

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 [42 U.S.C. 5851]. Section 40.31(g) also issued under sec. 122, 68 Stat. 939 [42 U.S.C. 2152]. Section 4046 also issued under sec. 184, 68 Stat. 954, as amended [42 U.S.C. 2234]. Section 40.71 also issued under sec. 187, 68 Stat. 955 [42 U.S.C. 2237].

For the purposes of sec. 223, 68 Stat. 958, as amended [42 U.S.C. 2273]; §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended [42 U.S.C. 2201(b)]; and §§ 40.5, 40.25 (c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended [42 U.S.C. 2201(o)].

4. In § 40.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended [42 U.S.C. 2071, 2073, 2201, 2232, 2282]; secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 [42 U.S.C. 5841, 5842, 5845, 5846].

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 [42 U.S.C. 5851]. Section 70.21(g) also issued under sec. 122, 68 Stat. 939 [42 U.S.C. 2152]. Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 [42 U.S.C. 2077]. Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended [42 U.S.C. 2234]. Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 [42 U.S.C. 2236, 2237]. Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended [42 U.S.C. 2138].

For the purposes of sec. 223, 68 Stat. 958, as amended [42 U.S.C. 2273]; §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended 42 U.S.C. 2201(b)]; §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended [42 U.S.C. 2201(i)]; and §§ 70.5, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended [42 U.S.C. 2201(o)].

6. In § 70.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

Dated at Bethesda, MD, this 26th day of September, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–22840 Filed 10–7–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-114-AD; Amdt. 39-5439]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary of Significant Structural Details (SSD) as described in the manufacturer's Supplemental Structral Inspection Document (SSID). Since the issuance of the AD, the manufacturer has revised the 707/720 Supplemental Structural Inspection Document to expand the sample size and revise certain inspection thresholds; this amendment incorporates those revisions. This action is necessary to improve the information provided by the SSID program for identification and evaluation of unsafe conditions.

EFFECTIVE DATE: November 14, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Perrella Airframe Branch ANM-120S; telephone (206) 431-1922. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 85-12-01, which requires inspection and repair, as necessary, of Significant Structural Details (SSD), as specified in the manufacturer's Supplemental Structural Inspection Document (SSID) D6-44860, Revision M, was published in the **Federal Register** on June 4, 1986 (51 FR 20304). The comment period of the proposal closed on July 28, 1986.

Interested parties have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to the one comment received, which supported the proposal.

After careful review of the available data, including the one comment previously mentioned, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 18 airplanes of U.S. registry and 9 U.S. operators will be affected by this AD, that approximately 100 manhours will be required to incorporate these revisions into a typical operator's maintenance program, and that the average labor charge will be $40 per manhour. Based on these figures, the costs impact of this AD to U.S. operators is estimated to be $36,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 707/720 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. By amending Airworthiness Directive 85-12-01, Amendment 39-5073 (50 FR 26690; May 20, 1985), by revising paragraphs A., B., and C. to read as follows:

A. Within 180 days after the effective date of the amendment, incorporate a revision into the FAA-approved maintenance inspection program which requires accomplishment of the inspection and repairs, as necessary, of each Significant Structural Detail (SSD) as listed in Boeing Document D6-44860, Supplemental Structural Inspection Document (SSID), Revision M, or later FAA-approved revision. The revision to the maintenance program must include procedures to notify the manufacturer when SSD's are found cracked. The inspection thresholds, repetitive inspection intervals, inspection techniques, and terminating action for each SSD are listed in the SSID. Incorporate this revision to the maintenance program in accordance with paragraphs B., C., and D., below.

B. The increase of inspection intervals in accordance with Section 5.2 of Boeing Document D6-44860, Revision M, is not permitted, except as provided in paragraphs F. and G., below.

C. Inspect each Significant Structural Detail (SSD) which has exceeded the initial threshold specified in Boeing Document D6-44860, Revision M, within 180 days after the effective date of this amendment. Significant Structural Details which are below the inspection thresholds specified in Boeing Document D6-44860, Revision M, must have an initial inspection within 180 days after the effective date of this amendment or prior to reaching the threshold, whichever is later. Accomplish these inspections in accordance with Boeing Document D6-44860, Revision M, or later FAA-approved revisions.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22739 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-138-AD; Amdt. 39-5437]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which supersedes an existing AD that requires inspection and replacement, as necessary, of the nacelle strut midspar fuse pins, on certain Boeing Model 747 series airplanes. This action is prompted by a recent investigation which revealed that the inspection techniques required by the existing AD are inadequate to find cracking on a consistent basis. This

action is necessary since a pin failure, if not corrected, could result in separation of the engine from the airplane.

EFFECTIVE DATES: November 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for, and subsequent repair of, cracked nacelle strut midspar fuse pins was published in the **Federal Register** on July 1, 1986 (51 FR 23786). The comment period for the proposal closed on August 22, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received.

The Air Transport Association (ATA) of America, on behalf of its members, stated that, while the proposed inspection may take only 12 to 16 manhours per airplane to accomplish, an operator cannot schedule this inspection on the assumption that all fuse pins will be found to be crack free. Pin replacement requires that the engine be removed and the pylon shored. Therefore, operators are scheduling this inspection only at their main bases, where the proper ground support and equipment is available. The ATA has requested that the compliance time be changed from 10 to 30 days so that operators will have an adequate time-1 frame to which to schedule their airplanes for the inspection at main bases. The FAA has considered this information and has determined that safety would not be compromised if the initial compliance time is changed from 10 to 30 days. The final rule has been revised to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 155 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $49,600.

For the reason discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291, or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747–54–2063, Revision 4, dated June 6, 1986.

To prevent failure of nacelle strut midspar fuse pins, accomplish the following, unless previously accomplished:

A. Prior to the accumulation of 12,000 flight hours, or within 30 days after the effective date of this AD, whichever occurs, later, perform an ultrasonic or eddy current inspection for cracks in the fuse pins in accordance with Boeing Service Bulletin 747–54–2063, Revision 4, dated June 6, 1986, or later FAA-approved revisions.

B. Repeat the inspections required by paragraph A., above, thereafter at intervals not to exceed 2,500 flight hours until terminating action in accordance with paragraph E., below, is accomplished.

C. Replace cracked fuse pins prior to further flight in accordance with Boeing Service Bulletin 747–54–2063, Revision 4, dated June 6, 1986, or later FAA-approved revisions.

D. Coat inside surface of the pins with organic corrosion-preventive compound (BMS 3–23), or equal, after each inspection. If corrosion exists, remove in accordance with the Boeing Corrosion Prevention Manual, Document D6–41910, Part III, 747 Corrosion Control, 54–10–47.

E. Installation of the new fuse pin design configuration in accordance with Boeing Service Bulletin 747–54–2063, Revision 1, dated August 13, 1981, or later FAA-approved revision, constitutes terminating action for the requirements of this AD.

F. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This supersedes AD 79–17–04, Amendment 39–3529, as amended by Amendments 39–4335 and 39–4973.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22736 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–193–AD, Amdt. 39–5440]

Airworthiness Directives; DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive, applicable to DeHavilland DHC–8–101 series airplanes, which requires flight manual limitations to prohibit takeoff, landing, and climb in the vicinity of lighting and thunderstorms, and also

requires use of continuous ignition. This action is prompted by reports of ignitor failures, which have been determined to be caused by the continuous ignition requirements of the existing AD. This condition, if not corrected, could detrimentally affect inflight engine restart capability. This amendment requires the use of continuous ignition only when operating under certain conditions. This amendment also revises the applicability of the existing AD to include all Model DHC–8–100 series airplanes.

EFFECTIVE DATE: October 27, 1986.

ADDRESS: The applicable service information may be obtained upon request to The DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Murry Schoenberger, FAA, New England Region, New York Aircraft Certification Office, Propulsion Branch (ANE–174), 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: On July 18, 1985, FAA issued telegraphic AD 85–14–51, Amendment 39–5185 (50 FR 51236; December 26, 1985), to impose flight manual limitations to restrict operation of DeHavilland Model DHC–8–101 series airplanes in the vicinity of lightning or thunderstorms, and to require continuous ignition operation during every takeoff, takeoff climb to 1500 feet above ground level (AGL), final approach, and landing. Transport Canada, which is the civil airworthiness authority for Canada, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist in DeHavilland Model DHC–8–100 series airplanes. There have been reports of numerous ignitor failures due to continuous usage required by AD 85–14–51. Since each engine has two ignitors, failure of both ignitors would result in the inability to restart the engine following an inflight flame-out.

Transport Canada has revised its Airworthiness Directive CF–85–06, which corresponds to U.S. AD 85–14–51, to require the use of continuous ignition only when operating below 1500 feet AGL in the vicinity of any storm cloud formations. Transport Canada has determined that the critical area relating to lightning is the vicinity of the takeoff climb path, rather than the entire vicinity of the airport, and has also revised its AD to prohibit takeoff when thunderstorms or lightning are in the vicinity of the takeoff climb path of the airplane.

Subsequent to the issuance of AD 85–14–51, the DeHavilland Model DHC–8–102, a new variant of the DHC–8–100 series, was type certificated. The unsafe conditions addressed in the original AD also exist with respect to this new model.

Since this condition is likely to exist or develop on airplanes of the same type design registered in the United States, this action amends AD 85–14–51 to expand the applicability to include all DHC–8–100 series airplanes; to prohibit takeoff when thunderstorms or lightning, or any weather conditions what might result in lightning or static discharge, are within 5 nautical miles of the takeoff climb path of the airplane; and to require that continuous ignition be used when operating below 1500 feet AGL within 5 nautical miles of any thunderstorms or lightning, or any weather conditions that might result in lightning or static discharge.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 85–14–51, Amendment 39–5185 (50 FR 51236; December 26, 1985), as follows:

A. Revise the company name and applicability as follows:

The DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to all Model DHC–8–100 series airplanes, certificated in any category.

1. Revise subparagraphs A.1. and A.2. as follows:

1. To preclude unacceptable loss of power during critical phases of flight, takeoff is prohibited when lightning or thunderstorms are observed or reported within 5 nautical miles of the takeoff climb path of the airplane, or when existing weather conditions may reasonably be expected to result in a lightning strike or static discharge.

2. Operating with engine ignition selected to manual is required when operating below 1500 feet AGL within 5 nautical miles of any observed or reported lightning or thunderstorms, or any weather condition that may reasonably be expected to result in a lightning strike or static discharge.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The DeHavilland Aircraft Company of Canada, a Division of Boeing Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 27, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22740 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-NM-123-AD; Amdt. 39-5438]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -30, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires radiographic (X-ray) inspections of the auxiliary emergency exit door shear pin fitting assemblies. This amendment is necessary to revise the existing applicability statement to limit the AD's applicability, and provide a modification that constitutes terminating action for the repetitive inspection requirements of the AD.

DATES: Effective November 14, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend Airworthiness Directive (AD) 80-02-16 to revise the applicability and provide a terminating modification, was published in the **Federal Register** on June 3, 1986 (51 FR 21565). The comment period for the proposal closed August 4, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supported the AD, but suggested that, as a practical matter, the optional terminating action is not likely to be accomplished because of the high cost of door replacement. FAA agrees; however, it does provide operators an alternative means of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

It is estimated that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $16,680.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 80-02-16, Amendment 39-3674 (45 FR 5669; January 24, 1980), as follows:

A. Revise the applicability statement to read:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -30 and C-9 (Military) series airplanes, Fuselage Numbers 1 through 735, certificated in any category, equipped with the aft pressure bulkhead auxiliary emergency exit door (P/N 5910367).

B. Re-identify paragraphs D. through F. as E. through G., respectively. Add a new paragraph D. to read as follows:

D. Accomplishment of modification in accordance with McDonnell Douglas DC-9 Service Bulletin 52-117, R1, dated October 6, 1982, or later FAA-approved revisions, constitutes terminating action for the repetitive inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach California.

This Amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22738 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-29-AD; Amdt. 39-5436]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes, Fuselage Numbers 1218 through 1249

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires the removal and replacement of four horizontal stablizer actuator mounting bolts on McDonnell Douglas Model DC-9-80 series airplanes. This AD is prompted by reports of over-torqued horizontal stabilizer actuator mounting bolts. The failure of these bolts could result in the loss of horizontal stabilizer trim effectiveness and control.

DATES: Effective November 14, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South,

Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require the removal and replacement of four horizontal stabilizer actuator mounting bolts on certain McDonnell Douglas DC-9-80 series airplanes was published in the **Federal Register** on May 12, 1986 (51 FR 17362). The comment period for the proposal closed June 30, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter suggested that the compliance time for the final rule should be changed to read, "prior to 30 January 1987," in lieu of "1,400 hours time in service, or within 6 months, whichever occurs earlier," as stated in the proposed compliance time referenced in the NPRM. The commenter further advises that any other action would be "unnecessarily restrictive." The FAA disagrees, and considers the compliance time appropriate. This is based upon the acticipated effective date of this rule, and a survey of operators which indicates that the proposed compliance schedule can be reasonably accommodated within existing inspection time frames. The commenter also suggested that several editorial changes be made to clarify portions of the applicability statement and economic impact analysis. The comments do not significantly affect the intent of the proposed rule. Therefore, the FAA concurs and the suggested changes have been incorporated in this AD, as appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

It is estimated that 22 airplanes (4 units per airplane) of U.S. registry will be affected by this AD, that it will take approximately 11 manhours per airplane to accomplish the required action, and the average labor cost will be $40 per manhour. Based on these figures, the toal cost impact of the AD on U.S. operators is estimated to be $9,680.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11033; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9-80 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-80 series airplanes, Fuselage Numbers 1218 through 1249, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent potential stress corrosion failure of the horizontal stabilizer actuator mounting bolts and subsequent damage to adjacent structure, within 1,400 hours time in service, or within 6 months, whichever occurs earlier, after the effective date of this AD, accomplish the following, unless already accomplished:

A. Remove and replace horizontal stabilizer actuator mounting bolts, left and right sides, in accordance with Paragraph 2, Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 27-278, dated April 3, 1986.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22737 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-64]

Staff Accounting Bulletin No. 64

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This Staff Accounting Bulletin expresses the staff's views regarding: (a) Applicability of guidance contained in Staff Accounting Bulletins, (b) reporting of income or loss applicable to common stock, (c) accounting for redeemable preferred stock (amending Topic 3.C.), and (d) issuances of shares prior to an initial public offering (amending Topic 4.D.).

DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering

the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

October 2, 1986.

Staff Accounting Bulletin No. 64

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 64 to the Table found in Subpart B.

The staff hereby adds the following to the Staff Accounting Bulletin Series:

(a) Topic 6.B.1., regarding the reporting of income or loss applicable to common stock; and

(b) Topic 6.C.1., regarding applicability of guidance contained in Staff Accounting Bulletins.[1]

Also, the staff hereby amends the following in the Staff Accounting Bulletin Series:

(a) Topic 3.C., regarding accounting for redeemable preferred stock; and

(b) Topic 4.D., regarding issuances of shares prior to an initial public offering.

Topic 3: Senior Securities

* * * * *

C. Redeemable Preferred Stock

Facts: Rule 5–02.28 of Regulation S–X states that redeemable preferred stocks are not to be included in amounts reported as stockholders' equity, and that their redemption amounts are to be shown on the face of the balance sheet. However, the Commission's rules and regulations do not address the carrying amount at which redeemable preferred stock should be reported, or how changes in its carrying amount should be treated in calculations of earnings per share and the ratio of earnings to combined fixed charges and preferred stock dividends.

Question 1: How should the carrying amount of redeemable preferred stock be determined?

Interpretive Response: The initial carrying amount of redeemable preferred stock should be its fair value at date of issue. Where fair value at date of issue is less than the mandatory redemption amount, the carrying amount shall be increased by periodic accretions, using the interest method, so that the carrying amount will equal the mandatory redemption amount at the mandatory redemption date. The carrying amount shall be further periodically increased by amounts representing dividends not currently declared or paid, but which will be payable under the manadatory redemption features, or for which ultimate payment is not solely within the control of the registrant (e.g., dividends that will be payable out of future earnings). Each type of increase in carrying amount shall be effected by charges against retained earnings or, in the absence of retained earnings, by charges against paid-in capital.

The accounting described in the preceding paragraph would apply irrespective of whether the redeemable preferred stock may be voluntarily redeemed by the issuer prior to the mandatory redemption date, or whether it may be converted into another class of securities by the holder.

Question 2: How should periodic increases in the carrying amount or redeemable preferred stock be treated in calculations of earnings per share and ratios of earnings to combined fixed charges and preferred stock dividends?

Interpretive Response: Each type of increase in carrying amount described in the Interpretive Response to Question 1 should be treated in the same manner as dividends on nonredeemable preferred stock.

Topic 4: Equity Accounts

* * * * *

D. Cheap Stock

Facts: A registration statement is filed in connection with an initial public offering ("IPO") of common stock. During the periods covered by income statements that are included in the registration statement, the registrant had issued common stock at prices substantially below the IPO price (referred to as "cheap stock"), and had issued common stock warrants, options, and other potentially dilutive instruments with exercise prices substantially below the IPO price (referred to collectively as "cheap warrants").

Question: In computing earnings per share, what treatment is appropriate for cheap stock and cheap warrants?

Interpretive Response: Except as discussed in the following paragraph, cheap stock and cheap warrants should be treated as outstanding for the entirety of all reported periods, in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with an IPO. The staff believes that this departure from the computational guidelines of APB Opinion No. 15 (i.e., use of weighted average shares outstanding) is necessary because of the relatively small consideration typically received for cheap stock and cheap warrants.

However, the staff will not normally insist on treating these instruments as outstanding prior to their issuance if: (a) The registrant can demonstrate that the instruments were issued for their estimated fair value on the dates issued (or, regarding shares issued upon exercise of warrants, that the respective warrants had been issued for their estimated fair value on the dates they were issued), and (b) the instruments were not issued in contemplation of a public offering. Regarding criterion (b), the staff will generally presume that stock and warrants issued within one year of an IPO were issued in contemplation of the IPO.

For example, the staff did not object to computation of earnings per share on the basis of the weighted average shares outstanding in a case where shares were issued in a private placement eighteen months prior to an IPO, at which time the issuer was not contemplating a public offering. Although those shares were sold at a price approximately 25% below the subsequent IPO price, the sales price had been estimated with the assistance of two independent investment bankers to be the fair value of the shares at that time, in consideration of their limited marketability. If, however, those shares had been issued in contemplation of an IPO, the staff would have insisted upon treating the shares as outstanding for all reported periods because the fair value of the shares would have been expected to increase upon development of a market for the shares.

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Topic 6: Interpretations of Accounting Series Releases

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B. Accounting Series Release No. 280—General Revision of Regulation S–X

1. Income or loss applicable to common stock.

Facts: A registrant has various classes of preferred stock. Dividends on those preferred stocks and accretions of their carrying amounts cause income applicable to common stock to be less than reported net income.

Question: In ASR No. 280, the Commission stated that although it has determined not to mandate presentation of income or loss applicable to common stock in all cases, it believes that disclosure of that amount is of value in certain situations. In what situations should the amount be reported, where

[1] Previous staff publications (most recently, SAB No. 40) have expressed the staff's intent regarding applicability of guidance contained in SABs, although not within the codification of SAB topics. The staff is hereby adding Topic 6.C.1. to emphasize this intent.

should it be reported, and how should it be computed?

Interpretive Response: Income or loss applicable to common stock should be reported on the face of the income statement when it is materially different in quantitative terms from reported net income or loss [2] or when it is indicative of significant trends or other qualitative considerations. The amount to be reported should be computed for each period as net income or loss less: (a) dividends on preferred stock, including undeclared or unpaid dividends if cumulative; and (b) periodic increases in the carrying amounts of instruments reported as redeemable preferred stock (as discussed in Topic 3.C.).

C. Accounting Series Release No. 180—Institution of Staff Accounting Bulletins (SABs)

1. Applicability of Guidance Contained in SABs.

Facts: The series of SABs was instituted to achieve wide dissemination of administrative interpretations and practices of the Commission's staff. In illustration of certain interpretations and practices, SABs may be written narrowly to describe the circumstances of particular matters which resulted in expression of the staff's views on those particular matters.

Question: How does the staff intend SABs to be applied in circumstances analogous to those addressed in SABs?

Interpretive Response: The staff's purpose in issuing SABs is to disseminate guidance for application not only in the narrowly described circumstances, but also, unless authoritative accounting literature calls for different treatment, in other circumstances where events and transactions have similar accounting and/or disclosure implications.

Registrants and independent accountants are encouraged to consult with the staff if they believe that particular circumstances call for accounting and/or disclosure different from that which would result from application of a SAB addressing those same or analogous circumstances.

[FR Doc. 86-22763 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[2] The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 2]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Adjunctive Dental Benefit

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8-R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule will allow for payment of dental care when perfomed in preparation for medical treatment of a disease or disorder or required as the result of iatrogenic dental trauma or complications caused by medically necessary treatment of an injury or a disease.

EFFECTIVE DATE: This amendment will be effective October 8, 1986.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, Telephone (303) 361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of the title. 32 CFR Part 199 (DoD 6010.8-R) was reissued on July 11, 1986 (51 FR 24008).

In FR Doc. 86-4329 appearing in the **Federal Register** on February 28, 1986, (51 FR 7089), the Office of the Secretary of Defense published for public comments a proposed amendment allowing for payment of dental care performed in preparation for or as a result of trauma caused by the treatment of an otherwise covered medical condition. As a result of the publication, only one comment was received.

This commentor felt that genetic or developmental anomalies of the face, jaws and teeth requiring dental treatment for correction should be covered under this amendment. Genetic or congenital anomalies of the teeth and their supporting structures are strictly dental in nature and as such could not be covered under the revised benefit interpretation. This amendment only expands the adjunctive dental benefit to allow for care required in preparation for or as a result of dental trauma caused by the treatment of an otherwise covered medical (not dental) condition. Paragraph (e)(10)(i)(*c*) of § 199.10 allows the program flexibility for incorporating rare or unusual conditions identified as meeting this interpretation. The list of conditions are only used to further define the general implementing provisions of the adjunctive dental care benefit. Coverage is still limited by the benefit definition and general exclusions.

Our previous interpretation of the regulatory implementation of section 1079(1) of Chapter 55, Title 10, United States Code limited payment to the dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition. This specifically excluded restoration of teeth and their supporting structures when injured or affected during the medical or surgical management of the medical condition.

In a final appeal decision the Assistant Secretary of Defense (Health Affairs) determined that this interpretation had unduly narrowed the intent of the adjunctive dental care benefit and that CHAMPUS should include cost sharing of medically necessary adjunctive care when performed in preparation for or as a result of trauma caused by the medically necessary treatment of an injury or disease. Dental care undertaken solely for the purpose of mitigating the consequences of the damage which may be caused by necessary medical treatment of an injury or a disease should be considered an integral part of the treatment of the medical condition rather than simply a preventative measure. Preventative care is defined as that care usually consisting of relatively benign measures which have a neutral or beneficial effect on the general health of the patient.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulation which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not

have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by adding definitions for "adjunctive dental care" and "dental care" in the proper alphabetical order to paragraph (b) as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Adjunctive dental care. Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition; or, is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic).

* * * * *

Dental care. Services relating to the teeth and their supporting structures.

* * * * *

3. Section 199.4 is amended by revising paragraphs (e)(10)(i), (e)(10)(ii) and the Note following paragraph (e)(10)(iv)(H) to read as follows:

§ 199.4 [Amended]

* * * * *

(e) * * *

(10) * * *

(i) *Adjunctive dental care: Limited.* Adjunctive dental care is limited to those services and supplies provided under the following conditions:

(A) Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition. The following is a list of conditions for which CHAMPUS benefits are payable under this provision:

(*1*) Intraoral abscesses which extend beyond the dental alveolus.

(*2*) Extraoral abscesses.

(*3*) Cellulitis and osteitis which is clearly exacerbating and directly affecting a medical condition currently under treatment.

(*4*) Removal of teeth and tooth fragments in order to treat and repair facial trauma resulting from an accidental injury.

(*5*) Myofacial Pain Dysfunction Syndrome.

(*6*) Total or complete ankyloglossia.

(*7*) Adjunctive dental and orthodontic support for cleft palate.

(*8*) The prosthetic replacement of either the maxilla or the mandible due to the reduction of body tissues associated with traumatic injury (e.g., impact, gun shot wound), in addition to services related to treating neoplasms or iatrogenic dental trauma.

Note.—The test of whether dental trauma is covered is whether the trauma is solely dental trauma. Dental trauma, in order to be covered, must be related to, and an integral part of medical trauma; or a result of medically necessary treatment of an injury or disease.

(B) Dental care required in preparation for medical treatment of a disease or disorder or required as the result of dental trauma caused by the medically necessary treatment of an injury or disease (iatrogenic).

(*1*) Necessary dental care including prophylaxis and extractions when performed in preparation for or as a result of in-line radiation therapy for oral or facial cancer.

(*2*) Treatment of gingival hyperplasia, with or without periodontal disease, as a direct result of prolonged therapy with Dilantin (diphenylhydantoin) or related compounds.

(C) Dental care is limited to the above and similar conditions specifically prescribed by the Director, OCHAMPUS, as meeting the requirements for coverage under the provisions of this section.

(ii) *General Exclusions.*

(A) Dental care which is routine, preventative, restorative, prosthodontic, periodontic or emergency does not qualify as adjunctive dental care for the purposes of CHAMPUS except when performed in preparation for or as a result of dental trauma caused by medically necessary treatment of an injury or disease.

(B) The adding or modifying of bridgework and dentures.

(C) Orthodontia, except when directly related to and an integral part of the medical or surgical correction of a cleft palate or when required in preparation for, or as a result of, trauma to the teeth and supporting structures caused by medically necessary treatment of an injury or disease.

* * * * *

Note.—Extraction of unerupted or partially erupted, malposed or impacted teeth, with or without the attached follicular or development tissues, is not a covered oral surgery procedure except when the care is indicated in preparation for medical treatment of a disease or disorder or required as a result of dental trauma caused by the necessary medical treatment of an injury or illness. Surgical preparation of the mouth for dentures is not covered by CHAMPUS.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22770 Filed 10-7-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston S.C. Regulation 86-01]

Safety Zone Regulations; Charleston Harbor, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone consisting of an area 500 yards from an operation involving a flying Navy helicopter and a surface or subsurface barge towed up to 400 yards astern the helicopter. The zone is needed to protect civilian craft from the safety hazards associated with winds and collision potential generated by the towing operation. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 6 October 1986. It terminates on 17 October 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Mark Johnson at (803) 724-4128.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NRPM and delaying its effective date would be contrary to the public interest since immediate action is

needed to respond to the hazards to civilian craft from this towing operation.

Drafting Information

The drafters of this regulation are LT Mark Johnson, project officer for the Captain of the Port, and LCDR Stan Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will occur intermittantly between 6 October 1986 and 17 October 1986. These operations involve large Navy helicopters at flight altitudes of 100 feet or less, towing surface and subsurface devices at speeds up to 25 knots. Helicopters may be identified by a rotating amber position light on centerline on main hull flashing 90 times per minute. An area of hurricane force winds exists within a 250 foot radius around these helicopters, sufficient to capsize small craft. The towed devices may be completely submerged and include large cables on or just below the surface streaming up to 1,200 feet behind the aircraft. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all or Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, 1231; 50 U.S.C. 191; 49 CDR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0745 is added to read as follows:

§ 165.T0745 Safety Zone: Charleston Habor, Charleston, South Carolina

(a) *Location.* The following area is a safety zone: that area 500 yards in all directions from an operation involving a flying Navy helicopter and a surface or subsurface barge towed up to 400 yards astern the helicopter.

(b) *Effective date.* This regulation becomes effective on 6 October 1986. It terminates on 17 October 1986 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Vessels found in violation of the safety zone will be hailed by authorized patrol craft. Once hailed a vessel will follow the instructions given by the hailing craft.

(3) Operations will occur intermittently.

Dated: 1 October, 1986.

CDR J.R. Townley, Jr.,

MSD Charleston.

[FR Doc. 86–22790 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Part 105

Pilotage; Status and Function of Transit Advisors

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is amending its regulations in Title 35, Code of Federal Regulations, Part 105, Pilotage, by adding a new paragraph concerning the status and function of transit advisors in the Panama Canal. This change makes it clear that the Canal Commission's liability for damages to small vessels under the guidance of a transit advisor is limited to $50,000, in accordance with section 2 of the Panama Canal Admendments Act of 1985, Pub. L. 99–209, 99 Stat. 1716, which amended section 1411 of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452 (22 U.S.C. 3771).

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634–6441, or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On June 24, 1986, a notice of proposed rulemaking was published in the **Federal Register** (51 FR 22947) setting forth proposed regulations covering the status and function of transit advisors in the Panama Canal. Interested parties were given the opportunity to submit comments by July 24, 1986. The only comment received concerned the liability for damage to small vessels. The matter of damage awards in these cases is fixed by statute and, consequently, it was determined that the proposal—which is directed solely to the question of defining transit advisors and their responsibilities—will remain unchanged at this time.

By way of background, on December 23, 1985, President Reagan signed into law the Panama Canal Amendments Act of 1985, Pub. L. 99–209, 99 Stat. 1716, which amended the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452. In particular, a subsection (b) was added to section 1411 of the 1979 Act (22 U.S.C. 3771) concerning those vessels whose navigation and movement in the locks are not under the control of a Panama Canal pilot. As amended, section 1411 limits the Commission's liability for damage to these vessels to $50,000.

Accordingly, the Canal Commission is now defining the status and function of Canal Commission transit advisors, who are assigned to act in an advisory capacity aboard vessels in lieu of a Panama Canal pilot, by adding a new § 105.7, to Part 105. In addition, § 105.1(a), "Pilots Required", is revised to refer to § 105.7. Section 105.1 requires all vessels, with certain exceptions, to use a Canal Commission pilot. The reference to § 105.7 will except from this requirement vessels carrying transit advisors.

The Canal Commission currently uses transit advisors on certain small vessels, and this provision is not intended to change that procedure. Transit advisors are not licensed pilots, and this amendment is intended to emphasize the distinction between pilots and transit advisors and define, for the first time, the function of the latter.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local governmental agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the

Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 105

Panama Canal, Vessels, Navigation.

PART 105—PILOTAGE

1. The authority citation for Part 105 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

2. Section 105.1 is amended by revising paragraph (a) to read as follows:

§ 105.1 Pilots required.

(a) Except as provided by §§ 105.2, 105.3, and 105.7 or by paragraph (c) of this section, no vessel shall pass through, enter or leave the Canal, or maneuver in the Canal or waters adjacent thereto, including the ports of Cristobal and Balboa, without having a Panama Canal pilot on board.

* * * * *

3. Part 105 is amended by adding § 105.7 to read as follows:

§ 105.7 Status and function of transit advisor.

Vessels less than 20 meters in length, except those described in § 105.2 (a) and (b), will be assigned a Panama Canal Commission transit advisor in lieu of a Panama Canal pilot. The transit advisor will function as an advisor, whose presence is necessary to provide comprehensive local knowledge of the Canal operating area and procedures for an efficient and safe transit.

Dated: September 15, 1986.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 86-22741 Filed 10-7-86; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 36

Fish and Wildlife Service

50 CFR Part 36

National Park Service

36 CFR Part 13

Bureau of Land Management

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska; Correction

AGENCY: Department of the Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a technical error which appeared in the **Federal Register** on September 4, 1986 (51 FR 31619). The following correction is being made.

1. The first sentence in the third full paragraph in this first column on page 31625 which reads, "Upon consideration of these comments, Interior has determined that the proposed regulation will be changed in the final rule." is revised to read as follows:

Upon consideration of these comments, Interior has determined that the proposed regulation will be unchanged in the final rule."

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, FWS, at (202) 343-3922.

Dated: October 2, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-22780 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-55-M

Office of the Secretary

43 CFR Part 36

Fish and Wildlife Service

50 CFR Part 36

National Park Service

36 CFR Part 13

Bureau of Land Management

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska

Correction

In FR Doc. 86-19734 beginning on page 31619 in the issue of Thursday, September 4, 1986, make the following corrections:

1. On page 31628, in the first column, in the first complete paragraph, in the fourteenth line, after "laws" insert "into".

§ 36.11 [Corrected]

2. On page 31633, in § 36.11, in the third column, the paragraph designated "(9)" is correctly designated "(g)".

3. On page 31634, in § 36.11(h)(4)(i), in the tenth line, "or" should read "on".

§ 36.13 [Corrected]

4. On page 31635, in § 36.13(c)(3), in the first column, in the last line, "§ 36.36" should read "§ 36.6".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3091-8]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice advises the public that EPA is approving an amendment to the Missouri Air Pollution Control Regulations as a revision to the Missouri State Implementation Plan (SIP). The purpose of this revision is to reduce volatile organic compound (VOC) emissions from the refueling of motor vehicles. The reduction of VOC emissions is required under the Clean Air Act to reduce ozone levels in the St. Louis ozone nonattainment area.

EFFECTIVE DATE: This action will be effective November 7, 1986.

ADDRESSES: Copies of the state submission, public comments, and EPA's technical evaluation are available at the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Missouri Department of Natural Resources, Air Pollution Control Program, 101 Jefferson Street, Jefferson City, Missouri 65101. A copy of the state's submission is also available at the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC, and the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: On June 17, 1986 (51 FR 21932), EPA proposed to approve an amendment to state Rule 10 CSR 10-5.220 for the St. Louis Metropolitan Area entitled, "Control of Petroleum Liquid Storage, Loading, and Transfer." This amendment requires the control of VOC emissions from the refueling of motor vehicles. This is known as Stage II vapor recovery. Stage I vapor recovery, controlling emissions from loading gasoline into underground tanks, has been required since 1978. The intended effect is to reduce ozone levels in the St. Louis nonattainment area by reducing the emissions of the VOCs that react in the atmosphere to form ozone. Stage II is one of the major control

measures contained in the state's demonstration that the NAAQS for ozone will be attained in the St. Louis ozone nonattainment area by December 31, 1987, as required by the Clean Air Act. For a further discussion of the attainment demonstration, please refer to the proposed approval published January 28, 1986 (51 FR 3475).

The proposal to approve the revised 10 CSR 10–5.220 was based on a draft state submission, using the parallel processing procedure. On June 18, 1986, the state submitted the final Stage II vapor recovery rule. The state did not make any changes to the final action on this regulation.

In the proposed rulemaking, EPA stated that prior to final action, Missouri would be required to submit assurances of adequate resources and inspection to implement the regulation. The state submitted a letter dated July 10, 1986, meeting these requirements.

EPA has reviewed the regulation and found that it will effectively achieve the desired VOC reductions and is consistent with the California Stage II vapor recovery regulations which EPA used as a benchmark for evaluation. California has the best working Stage II program and there is no federal guideline for Stage II programs; therefore, EPA used the California regulation as a basis for reviewing the Missouri regulation. A more detailed description of EPA's review of the state's regulation can be found in the proposal. Four public comments were received on the June 17, 1986, proposal of this rule. All of the commentors favored the approval of the Missouri Stage II vapor recovery rule.

In the final rulemaking on the St. Louis attainment demonstration, EPA made approval contingent on final approval of the Stage II regulation. Today's final approval removes the contingency stipulation from the attainment demonstration.

Final Action

EPA is taking final action to approve Missouri's Stage II vapor recovery rule for the St. Louis Metropolitan Area.

This state submission constitutes a revision to the Missouri SIP. The Administrator's decision to approve this revision is based on the comments received and on a determination that the revision meets the requirements of sections 110 and 172 of the Clean Air Act, of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

The Office of Management and Budget has exempted this rule from the requirements on section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 19, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulation is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(61) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(61) On June 9, 1986, the state of Missouri submitted an amendment to Rule 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading, and Transfer. This amendment requires the control of volatile organic compound emissions from the refueling of motor vehicles in the St. Louis Metropolitan Area.

(i) Incorporation by reference.

(A) 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading, and Transfer, revised paragraphs 4, 5, 6, 7, 8, and 9, published in the Missouri Register on May 1, 1986.

§ 52.1323 [Amended]

3. Section 52.1323 paragraph (b) is removed.

[FR Doc. 86–22829 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F3114/R850; FRL–3091–6]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the commodity artichokes. This regulation, to establish maximum permissible level for the combined residues of permethrin on artichokes, was requested in a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on October 8, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3114/R850], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 200, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 24, 1984 (49 FR 42787), which announced that ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Road, Wilmington, DE 19897, had submitted pesticide petition 4F3114 to EPA proposing to establish a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl(±)-*cis,trans*-3-(2,2-dichloroethenyl)2,2-dimethlycyclopropanecarboxylate] and its metabolites (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethlycyclopropanecarboxylic acid (DCVA) and (3-phenoxy-phenyl)methanol (3-PBA) in or on the raw agricultural commodity artichokes at 10 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted and relevant material have been evaluated. The toxicological data considered in support of tolerances for the combined residues of the insecticide permethrin were previously published in the Federal

Register of October 13, 1982 (47 FR 45008).

Granting this tolerance on artichokes at 10.0 ppm will increase the theoretical maximum residue contribution from 1.3559 to 1.3604 mg/day. This increase is slight and, thus, the discussion of the toxicological concerns applies without revision to the newly listed commodity. The percentage of the acceptable daily intake used will increase from 45.20 to 45.35 percent.

The metabolism of permethrin is adequately understood and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes in Volume II of the Food and Drug Analytical Manual. No actions are pending against continued registration of permethrin, nor are any other considerations involved in established the tolerance.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in artichokes. There are no feed items associated with artichokes and a label restriction precludes the grazing of livestocks in treated orchards. There is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs as a result of this use.

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378(b) is amended by adding and alphabetically inserting the commodity artichokes to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Artichokes	10.0
* * * * *	

[FR Doc. 86-22683 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL 3042-7]

State Hazardous Waste Program Requirements

Correction

In FR Doc. 86-21250 beginning on page 33712 in the issue of Monday, September 22, 1986, make the following corrections: On page 33721, in Table 2, in the last column, entitled "FEDERAL REGISTER reference", remove the "Do." in the tenth, ninth, and sixth through first lines from the bottom of the column.

BILLING CODE 1505-01-M

40 CFR Part 716

[OPTS-84014A; FRL-3053-8]

Health and Safety Data Reporting; Submission of Lists and Copies

Correction

In FR Doc. 86-20437 beginning on page 32720 in the issue of Monday, September 15, 1986, make the following corrections:

1. On page 32732 in the fourth column, the twenty-fourth entry should read "01/13/82".

2. On pages 32732 and 32733, items 5344-82-1 through 69009-90-1 were duplicated. The duplicated entries appearing on page 32733 should be deleted.

3. On page 32734, first column of the table, twenty-fourth line, "hexachlro-" should read "hexachloro-", and in the thirty-seventh line, insert ")" after "propenyl".

4. On page 32735, first column of the table, twenty-fifth line, remove "1,1-difluoro-" and insert it on the twenty-sixth line after "Ethene,".

5. On page 32738, second column of the table, the fifteenth entry should read "3530-19-6".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 83-737]

Frequency Coordination in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its private land mobile radio rules as a result of petitions for reconsideration filed in this proceeding concerning frequency coordination.

EFFECTIVE DATE: October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 83-737 adopted September 18, 1986, and released September 26, 1986. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Washington, DC 20037, telephone (202) 857-3800.

Summary of Memorandum Opinion and Order

1. On April 15, 1986, the FCC released a Report and Order, 51 FR 14993 (April 22, 1986), that adopted rules and policies

revising frequency coordination procedures in the private land mobile radio services. Nine petitions for reconsideration were filed asking that certain decisions be changed.

2. The FCC, in this Memorandum Opinion and Order, denies those petitions regarding the Special Emergency Radio Service. No new arguments were presented that warranted changing the decision to certify the joint venture of the International Municipal Signal Association, the International Association of Fire Chiefs, and the National Association of Business and Educational Radio as the certified frequency coordinator for the Special Emergency Radio Service. Requests to set aside the effective date of the adopted rules and initiate a separate proceeding concerning the Special Emergency Radio Service were denied since the benefits to both the public and the Commission of the decisions in this proceeding warrant prompt implementation of the adopted rules.

3. It denies the petition of Teletech, Inc. which urges the Commission either to reinstate the field study as an alternative to obtaining a recommendation from a frequency coordinator, or to certify multiple coordinators in each radio service. The ruling states that nothing was submitted that would rebut the FCC's poor experience with field studies, and that Teletech's arguments concerning multiple coordinators for each radio service were legally unsound. It also denies the petition of the Associated Public-Safety Communication Officers, Inc., which asked to be named the frequency coordinator for all shared public safety frequencies. The Commission stated that its present inter-service coordination procedures for shared frequencies have proven to be adequate. It also denies APCO's petition to require frequency coordination for all control stations regardless of antenna height, stating that interference problems were not widespread, that control stations are authorized on a non-interference basis, and that the present coordination requirements for control stations have worked well for many years without complaints from licensees or coordinators.

4. It grants the petition of the Manufacturers Radio Frequency Advisory Committee requesting that an increase or decrease of 50 or more paging units require a modification to a station license, stating that this action will improve the coordinator's data base. It also grants a joint petition of the Manufacturers Radio Frequency Advisory Committee and Forest Industries Telecommunications urging retention of interservice frequency coordination for ten low-power mobile frequencies in the 72–76 MHz band, indicating that this was overlooked in the Report and Order.

5. It denies those portions of the petition of the National Association of Business and Educational Radio, Inc. (NABER) to require coordination for add-on users to multiple licensed systems on exclusive 470–512 and 800 MHz assignments and coordination and licensing for member/users of private carrier and non-profit cooperative systems operating below 800 MHz. These decisions were made in the interest of providing the coordinator with the necessary information to maintain an accurate data base, but yet not impose an unnecessary economic burden upon system users. It grants NABER's request to clarify the coordination procedures for the 150 MHz narrowband frequencies.

6. The Memorandum Opinion and Order also clarifies the coordinator's speed-of-service requirement when a concurrence is required from another coordinator for the use of an adjacent channel frequency.

List of Subjects in 47 CFR Part 90

Frequency coordination, Special emergency radio service, Private land mobile radio services, Radio.

William J. Tricarico,

Secretary.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Part 90 of Title 47 of the CFR is amended as follows:

The authority citation for Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

1. Section 90.79 is amended by revising paragraph (d)(4) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, and Railroad Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of plants, mills, yards, or other manufacturing areas. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

2. Section 90.135 is amended by adding a new paragraph (a)(8) to read as follows:

§ 90.135 Modification of license.

(a) * * *

* * * * *

(8) Change by 50 or more units in the number of paging receivers.

* * * * *

3. Section 90.175 is amended by revising paragraph (f)(3) and adding paragraph (f)(13) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies listed in §§ 90.67(c)(34), 90.73(d)(7), 90.79(d)(4), and 90.91(c)(2).

* * * * *

(13) Applications for frequencies in the 216–220 and 1427–1435 MHz bands.

4. Section 90.179 is amended by revising paragraph (e) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(e) Applicants for stations governed under this section shall submit with their application the names and addresses, telephone numbers, nature of business or activity establishing eligiblity, and contact person for all systems users or members, together with the number of mobiles and control stations each user will initially put into operation. Eight months after grant, annually thereafter, and also whenever the system's total mobile and control station count decreases by 20 percent from the licensee's current authorization, the licensee shall submit to the applicable coordinator an updated listed containing the above information, including the number of mobiles and control stations each user or member employs.

* * * * *

[FR Doc. 86–22689 Filed 10–7–86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-183-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would surpersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 airplanes, which currently requires repetitive inspections for cracks and repair, if necessary, of the wing rear spar terminal fitting, and identifies terminating action. This action is prompted by a reevaluation of the terminating action described in the AD. This assessment has determined that the terminating action is inappropriate and that it is necessary to periodically inspect the modified or repaired wing rear spar terminal fittings for cracks. Failure to detect cracks prior to reaching critical length may severely reduce the load carrying capability of the wing.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-183-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98186.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrative before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice or Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn. ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-183-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

Airworthiness Directive (AD) 83-04-01, Amendment 39-4570 (48 FR 7721; February 24, 1983), was issued February 14, 1983, to require inspection of the wing rear spar terminal fitting for cracks. Since issuing the AD, a determination has been made that the repair and modifications described in Boeing Service Bulletin 727-57-103 and specified as terminating action for the repetitive inspections required by AD 83-04-01 are insufficient to eliminate the possibility of future cracking. Failure to detect cracking prior to reaching critical length may severely reduce the load carrying capability of the wing.

Since these conditions are likely to exist or develop on other airplanes of this model, the FAA is proposing to supersede AD 83-04-01 with a new AD that would delete the terminating action and require periodic inspections of the wing rear spar terminal fittings that have been repaired or modified in accordance with Boeing Service Bulletin 727-57-103.

It is estimated that 120 airplanes would be affected by this AD, that it would take approximately 336 manhours per airplane to accomplish the additional required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the increased cost would be $1,612,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 83-04-01, Amendment 39-4570 (48 FR 7721;

February 24, 1983), with the following airworthiness directive:

Boeing: Applies to Model 727 series airplanes listed in Boeing Service Bulletin 727-57-103, Revision 3, dated June 19, 1981, certificated in any category.

Compliance is required within the next 6,000 landings after March 31, 1983; or prior to accumulating 30,000 landings; or 30,000 landings after repair or modification in accordance with Service Bulletin 727-57-103; whichever occurs latest, unless already accomplished.

To ensure the structural integrity of the wing rear spar terminal fitting accomplish the following:

A. Inspect the wing rear spar terminal fittings for cracks, using x-ray, eddy current and close visual techniques, in accordance with the procedures listed in Table I of the Addendum, Flight Safety Section, Boeing Service Bulletin 727-57-103, Revision 3, dated June 19, 1981, or later FAA-approved revisions. Repeat the inspection at intervals not to exceed 20,000 landings.

Note.—Terminal fittings listed in the above referenced service bulletin as not requiring modification need not be inspected in accordance with the requirements of this AD.

B. Cracked structure must be repaired before further flight in accordance with Service Bulletin 727-57-103, original issue, or later FAA-approved revisions.

C. For the purpose of this AD, and when approved by an FAA maintenance inspector, the number of landings may be computed by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the aircraft type.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This supersedes AD 83-04-01, Amendment 39-4570.

All persons affected by this proposal who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22733 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-195-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to all Boeing Model 727 airplanes, that would require the periodic replacement of the sealed needle bearings in the downlock outer link of the side strut upper segment of the main landing gear assembly. This action is necessary because of reports of deterioration of the bearings by corrosion, which, if not corrected, can prevent the proper extension of the landing gear.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reported incidents involving corrosion of the sealed needle bearings in the downlock outer link in the side strut upper segment of the main landing gear assembly. In one incident, the corrosion was so severe that the flight crew was unable to fully extend the landing gear, which resulted in a wheels-up landing and extensive damage to the airplane.

Since this condition may exist or develop on other airplanes of this same type design, the FAA is proposing an AD that would require replacement of the bearings and inspection and replacement, as necessary of the associated retainer bolt.

It is estimated that 1,188 Boeing Model 727 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement bearings cost is estimated to be $10 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $962,280.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this

action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category.

Prior to the accumulation of 10,000 landings or 6 years from date of manufacture or prior replacement, or within 6 months after the effective date of this AD, whichever occurs latest, accomplish the following:

A. Replace the sealed needle bearings in the downlock outer link of the side strut upper segment of the left and right main landing gear assemblies, part number BACB10B107J or BACB10CC10E, in accordance with the Boeing 727 Overhaul Manual, Subject 32–13–01, with new bearings with the same part number. Inspect retainer bolt for damage or corrosion. If damage or corrosion is detected, replace the bolt with a new bolt, part number NAS1110–100DW or BACB30LT10D–100. Lubricate washer face, bolt shank, and threads with MIL–G–21164 grease, or equivalent, before installation.

B. Repeat the requirements of paragraph A. of this AD at intervals not to exceed 6 years or 10,000 landings, whichever occurs first.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22735 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–186–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes equipped with General Electric CF6 engines, which would require repetitive inspections of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons, and repair, if necessary. This proposal would also provide for an optional modification of the pylons which, if incorporated, would terminate the proposed repetitive inspection requirement. This action is prompted by a recent report of extensive damage to 7 pylons on 4 airplanes. This action is necessary since overheating and subsequent cracking, if not corrected, could result in failure of the pylon and separation of the engine from the airplane.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–186–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–186–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There has been a recent report of extensive overheating and subsequent cracking of 7 pylons on 4 airplanes. Heat damage has been observed on airplanes with 2,800 to 28,000 flight hours. The overheating and subsequent annealing of the pylon skin is caused by the high temperature precooler exhaust.

The annealed structure is subject to premature fatigue cracking. Continued operation with extensive heat damage could result in loss of structural integrity of the pylon and subsequent separation of the engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984, which described the specific procedures to be used to inspect for heat discoloration, wrinkles, or cracks on the engine pylons. The service bulletin also includes an optional modification that, if incorporated, would terminate the need for further inspections. The optional modification includes the addition of stainless steel doublers to the skin and reinforcement of the frame.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being proposed which would require inspection of the pylon adjacent to the precooler exhaust vent for cracking of the skin; repair, if necessary; and optional modification; in accordance with Boeing Service Bulletin 747–54–2091.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $560 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984, certificated in any category.

To prevent separation of an engine due to overheating and subsequent cracking of the engine pylon, accomplish the following, unless already accomplished:

A. Prior to accumulation of 10,000 flight hours, or within the next 7½ months after the effective date of this AD, whichever occurs later, perform a visual inspection of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons of Group 1 airplanes, and on the outboard pylons only of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984.

B. If no cracks are found, reinspect at intervals not to exceed 15 months until terminating action, defined in paragraph D. of this AD, is accomplished.

C. If cracks are found, repair prior to further flight in accordance with FAA-approved data and continue to reinspect at intervals not to exceed 15 months; or install the terminating modification defined in paragraph D. of this AD.

D. Terminating action for the inspections required by this AD is the installation of the frame stiffeners and skin doublers in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certificate Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22734 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–163–AD]

Airworthiness Directive; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas DC–8 series airplanes, that would require structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some McDonnell Douglas DC–8 series airplanes are approaching or have exceeded the manufacturer's original fatigue design life. This AD is prompted by a structural reevaluation which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life goal. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATE: Comments must be received no later than December 1, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–163–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for

examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-163-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the fail-safe design and damage tolerance of the McDonnell Douglas DC-8 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using damage tolerance evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," and federal Aviation Regulations (FAR) Section 25.571 (Amdt. 25-45).

In response to AC 91-56, McDonnell Douglas initiated the development of a Supplemental Inspection Document (SID) for the DC-8 aircraft. McDonnell Douglase and the operators established an Industry Steering Committee (ISC) for McDonnell Douglas airplanes. At the onset, it was decided to make maximum use of service experience and existing maintenance programs. DC-8 operators, FAA Engineering personnel, and FAA Flight Standards Inspectors, together with the manufacturer, have participated in generating the DC-8 SID. Advisory Circular 91-56 promotes the preparation and approval of a criteria document for such a program. McDonnell Douglas developed criteria and guidelines for: (a) selecting the major areas of the structure, identified as Principal Structural Elements (PSE), which are candidates for supplemental inspection by using the latest durability and damage tolerance analysis techniques; and (b) generating a sampling inspection program. This supplemental inspection program evaluates the adequacy of current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection programs, as necessary. The program was established on the basis of damage tolerance evaluation of each PSE selected. A PSE is defined as "that structure whose failure, if it remained undected, could lead to the loss of the aircraft." Selection of a PSE is influenced by the susceptibility of a structural area, part, or element to fatigue, corrosion, stress corrosion, or accidental damage.

The DC-8 Supplemental Inspection Document, Report No. L26-011, addresses five basic issues: (a) Identification of the selected PSE's, (b) when to accomplish inspection (including the fatigue life threshold), (c) frequency of inspection, (d) number of inspections required, and (e) non-destructive inspection (NDI) procedures for detecting cracks.

The SID inspection program is based on DC-8 current usage; durability-fatigue and damage tolerance assessment of the structure using current analysis techniques and tests; and selection of the current non-destructive inspection methods. In order to implement the SID inspection program, each operator must compare its current structural maintenance program to the SID requirements for each PSE. If the current inspections equal or exceed the SID requirements for a given PSE, no supplemental inspections would be required for that PSE under the SID program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SID program is an aging aircraft, the inspection program is a sampling program with emphasis on the high time aircraft of each PSE population.

The population for a given PSE (and aircraft type) consists of all those airplanes in which the PSE has the same or similar material fatigue life, loading, damage tolerance, and inspection characteristics. Thus, a PSE population may consist of all aircraft in the fleet or it may be divided into several populations because of sufficient differences in structural configuration, material, damage tolerance, or non-destructive inspection characteristics.

Under the sampling program, each PSE would be inspected independently of other PSE's. Symmetrical structure results in two samples per airplane, left and right. For sampling purposes, one or both sides of the aircraft may be inspected. It is important to note that each PSE always stands by itself; that is, inspection thresholds, inspection intervals, etc., are generally different for each PSE.

All configurations of each PSE are included in the SID program, e.g., material changes, structural modifications and replacements, etc. Since McDonnall Douglas Corporation (MDC) Service Bulletins (SB) are not mandatory, supplemental inspection procedures are provided in the SID for both pre-SB and post-SB configurations of each applicable PSE. Airworthiness directives (AD) are mandatory. Therefore, a PSE currently under an AD is placed in a separate section in the SID. When the closing action to a structural modification AD has been performed, the PSE is moved into the population which reflects the modified structural configuration. The date and flight hours (or landings) at which modification or replacement of a PSE is made, would be required to be reported by the operator the MDC for each applicable airplane by fuselage number and/or factory serial number and PSE number. That particular configuration is then evaluated by McDonnell Douglas. The inspection threshold and interval will be established and published in the next revision of the SID.

Sampling Program

Airplanes with the highest number of flight cycles are the most likely to experience initial fatigue damage in the fleet. Therefore, this program is based on the supplemental inspection of a "sample" of the high time PSE's in the fleet. Supplemental inspection of a statistically significant number of samples of a PSE, coupled with reporting of the results of these inspections, and, where necessary, follow up activity will maintain the continued airworthiness of the entire fleet. If no fatigue cracks are found in the sample population, and the size of sampling population is such that it gives statistically meaningful data, the fatigue life threshold may be advanced in accordance with the SID for that PSE. The expected fatigue life of each PSE is determined by a demonstrated life, either by test or service experience, or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each PSE. All sample inspections are to be accomplished before the high time sample exceeds the fatigue life threshold. Irrespective of the sample

size required, the 10 high time samples in the population for each PSE must be inspected. However, if the number of samples in a PSE population is 10 or less, each PSE must be inspected once before the fatigue life threshold is reached and repeatedly inspected when the threshold is exceeded. The inspection interval is determined by the damage tolerance characteristics of the PSE.

The results of the supplemental inspections are to be reported to the manufacturer on a form provided in Volume III of the SID. This information will be presented in the periodic revision of Volume III.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and have been assigned OMB Control Number 2120–0056.

Effect on Existing Maintenance Programs

In developing the SID, the working group reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SID program. As a result, the McDonnell Douglas DC–8 SID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their affected airplanes.

Economic Impact

Approximately 211 airplanes of U.S. registry and 54 U.S. operators would be affected by the proposed AD. It is estimated that incorporation of the Supplemental Inspection program for a typical operator would take approximately 500 manhours. The average labor charge would be $40 per manhour. Based on these figures, the cost to incorporate the SID program on U.S. operators is estimated to be $1,080,000.

The recurring inspection cost to the affected operators are estimated to be 245 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be approximately $2,067,800.

Based on the above figures, the total cost impact of this AD is estimated to be approximately $3,147,800 for the first year, and $2,067,800 for each year thereafter.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–8 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–8 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes accomplish the following, unless already accomplished:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–011, DC–8 Supplemental Inspection Document (SID), dated December 1985, or later FAA-approved revisions, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The FAA has requested Federal Register approval to incorporate by reference the manufacturer's Supplemental Inspection Document identified and described in this directive.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22732 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–ASO–11]

Proposed Alteration of Federal Airways, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter six Federal airways in the vicinity of Whitesburg, KY. These airways are presently aligned with the very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) at Whitesburg which is being relocated approximately 22 miles to the northwest and renamed Hazard, KY.

DATES: Comments must be received on or before November 24, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86–ASO–11, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief

Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airpsace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarinzing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to align VOR Federal Airways V-53, V-115, V-140, V-331, V-339 and V-517 with the planned relocated and renamed Whitesburg, KY, VORTAC. Whitesburg, KY, VORTAC is remotely located and subject to continuous vandalism. A project is underway to relocate the facility to a site on the Eastern Kentucky Regional Airport which is approximately 22 miles to the northwest. When relocated and commissioned the facility will be renamed Hazard, KY, VORTAC. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-53, V-115, V-140, V-331, and V-339 [Amended]

By removing the words "Whitesburg, KY" and by substituting the words "Hazard, KY".

V-517 [Amended]

By removing "013°" and by substituting "019°T(022°M)".

Issued in Washington, DC, on October 1, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22731 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing—Commissioner

24 CFR Parts 207 and 255

[Docket No. R-86-1300; FR-2224]

Section 233(f) Mortgage Insurance; Inspection Fees for Repairs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule revises current regulations of the section 223(f) mortgage insurance programs to authorize the charging of an inspection fee where the application for mortgage insurance (of coinsurance) covering an existing multifamily project involves the carrying out of repairs and improvements.

DATE: Comment due date: December 8, 1986.

ADDRESS: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room, 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The current regulation for the full insurance

of existing multifamily projects pursuant to section 223 (f) expressly states that "No inspection fee will be required" in connection with the transaction (*see* 24 CFR 207.32a(a)(4)). Under similar Part 255 coinsurance, there is a provision in the current regulation authorizing the coinsuring lender to collect an inspection fee "if applicable" (*see* 24 CFR 255.206(a)). To date, HUD has limited the charging of inspection fees in coinsurance to cases where the project is also receiving assistance under the Rental Rehabilitation (24 CFR Part 511) or Housing Development Grant (24 CFR Part 850) Program. This rule would revise both §§ 207.32a(a)(4) and 255.206(a) to permit, in cases where an application provides for completion of repairs and improvements, an inspection fee to be charged by the FHA Commissioner (or, in the case of the coinsurance rule, by the lender). A fee of $30 per unit may be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per unit may not exceed one percent of the cost of repairs.

This revision is need if the Section 223(f) programs are to be effectively administered. Under both full insurance and the coinsurance program, allowable repairs are for up to $6500 per unit (adjusted by any high-cost factor for the area), and if the project is assisted under the Part 511 Rental Rehabilitation or the Part 850 Housing Development Grant Program, allowable costs may go up to $25,000 per dwelling unit. Program experience has demonstrated that most section 223(f) projects involve repairs and improvements and that a uniform procedure for inspection of these repairs is essential. This rule provides for a two-tier fee structure to cover inspection costs, with repair costs of $3000 serving as the dividing point. The Department believes a higher fee should be chargeable where the pre-unit repair cost is over $3000 since, where repairs are extensive, inspection visits will need to be more frequent and more complex repair items (such as replacement of a major building component) are usually involved at this upper cost range.

The Department invites public comment on the reasonableness of the specific inspection fee structure set forth in this rule.

In accordance with 5 U.S.C. 605(b) (the Regulatory Felxibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the inspection fee is not onerous and is chargeable equally to small and large entities. Similar fees are charged in other FHA multifamily programs.

This rule was not listed in the Department's Seminannual Agenda of Regulations published on April 21, 1986 (51 FR 14036) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.173.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are proposed to be amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act, (12 U.S.C. 1713, 1715b); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. Section 207.32a(a)(4) would be revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(a) * * *

(4) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee may be charged by the Commissioner. A fee of $30 per dwelling unit will be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of the repairs.

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OR FINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 255 would continue to read as follows:

Authority: Secs. 211, 244, National Housing Act, 12 U.S.C 1715b, 1715z(9); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Paragraph (a) of § 255.206 would be revised to read as follows:

§ 255.206 Lender's fees and premium.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and where an application provides for the completion of repairs and improvements, an inspection fee. These fees may not exceed maximums approved by the Commissioner. In the case of inspection fees, a fee of up to $30 per dwelling unit may be charged where the project involves repairs of $3000 or less per unit. The inspection fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of repairs. The lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to excess comparable fees followed in the full insurance program under § 207.32a of this chapter.

* * * * *

Dated: August 13, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant, Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-22827 Filed 10-7-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[DoD Instruction 6010.XX]

Coordination of Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This part is to comply with Pub. L. 99–272. It also informs the public that the Department of Defense shall collect from third-party payers the reasonable inpatient hospital care costs incurred on behalf of retirees and dependents. Section 2001 of Pub. L. 99–272, April 7, 1986, Consolidated Omnibus Budget Reconciliation Act of 1985, amended Chapter 55 of title 10, United States Code by adding a new section, 10 U.S.C. 1095, "Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents."

DATES: Written comments must be received on or before November 7, 1986. The provision of this law apply to inpatient care provided after September 30, 1986.

ADDRESS: Interested persons are invited to submit written comments to: Office of the Assistant Secretary of Defense (HA), Room 3E321, Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: John Maddy, Pentagon, Room 3E321, (202) 694–3242.

SUPPLEMENTARY INFORMATION: Although cost recoveries from all third-party carriers are expected to be in excess of $100 million per year in future years, since these are cost recoveries, the impact on the economy as a whole will not be in excess of the E.O. 12291 criterion for a major rule. The Instructions issued by the Assistant Secretary of Defense (Health Affairs), as distinguished from the law which required the Instructions, will result in no significant increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. They will have no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. They also will impose no regulatory, paperwork, or administrative burdens on small entities.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

Accordingly, it is proposed to amend Title 32 by adding Part 220 to read as follows:

PART 220—COORDINATION OF BENEFITS

Sec.

Authority: Pub. L. 99–272, Section 2001; 10 U.S.C. Chapter 55.

§ 220.1 Purpose.

This part establishes policy under Pub. L. 99–272 and Title 10, Chapter 55 and assigns responsibility for implementing the authority for collection by the United States of inpatient hospital costs incurred on behalf of retirees and dependents.

§ 220.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 220.3 Definitions.

(a) *Third-party payer.* An entity that provides an insurance, medical service, or health plan by contract or agreement. Also includes both insurance underwriters and private employees who offer self-insured or partially self-insured/partially underwritten health insurance plans.

(b) *Inpatient hospital care.* Treatment provided to an individual, other than a transient patient, who is admitted (placed under treatment or observation) to a bed in a medical treatment facility which has authorized or designated beds for inpatient medical or dental care.

§ 220.4 Policy.

(a) Under 10 U.S.C. 1095, in the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C. 1095, the United States has the right to collect from a third-party payer the reasonable costs of inpatient hospital care incurred by the United States on belhalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. If the insurance, medical service or health plan of that payer includes a requirements for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

(b) a person covered by section 1074(b), 1076(a), or 1076(b) of title 10 U.S.C. may not be required to pay an additional amount to the United States for inpatient hospital care by reason of this section.

§ 220.5 Procedures.

(a) Authority to collect applies to an insurance, medical service, or health plan agreement entered into, amended or renewed on or after April 7, 1986 for inpatient hospital care provided after September 30, 1986. An amendment includes, but is not limited to any change of rates.

(b) The Military Medical Treatment Facility (MTF) will prepare bills to the third-party insurance carriers for medical care and services rendered to dependents and retirees using the Uniform Bill, UB–82. The MTFs will complete those data elements and codes identified by the National Uniform Billing Committee as required entries for submission of bills to commercial third-party carriers.

(c) A per diem charge equal to the inpatient full reimbursement rate will be used to bill third-party payers in accordance with the medical and subsistence charges established and published by OASD(C) for each fiscal year. For purposes of billing third-party payers, the rates for FY87 and thereafter will be subdivided by OASD(C)— into three categories: (1) Hospital charges, (2) physician charges, and (3) ancilliary charges.

(d) Medical services and subsistence charges for dependents and retirees are considered separate rates and are an integral part of the current automated systems. The Services will continue to bill and collect these charges using current methods. Collections and billings for third-party payers will be accounted for separately. An example of this would be the processing of third-party liability cases under the Federal Medical care Recovery Act (42 U.S.C. 2651–53). In these cases the dependent rate and subsistence charges are collected locally and the per diem rate is collected through legal channels from third-party payers.

(e) Funds collected for the first year will be deposited to the Treasury in the Miscellaneous Receipts Account. Each Service will continue to use procedures currently in effect for collections. Accounting records shall be established

to be able to report (1) total amount billed to third-party payers, (2) amount collected, and (3) amount not collected for various reasons.

(f) Military Medical Treatment Facilities will, when requested, make the health care records of individuals for whose care the United States is seeking recovery of costs available for inspection and review by representatives of the third-party carrier covering the individual's medical care, solely for the purposes of permitting the carrier to verify that (1) the care for which recovery of costs is sought by the MTF was furnished, and (2) the provision of such care to the individual meets criteria generally applicable under the health plan contract involved.

(g) A nine digit facility code and a patient ID number are required. For the facility code use zeros in front of the MTF code and the patients's SSAN as the patient ID number.

(h) Each Military Department will submit a quarterly report to ASD(HA). Reports will be due on the 20th of January, April, July and October. A Reports Control Symbol (RCS) Number will be provided by OASD/HA. The following information will be required in the report:

(1) Number of UB Forms 82 submitted to third-party payers;

(2) Total amount billed to third-party payers (accounts receivable);

(3) Total collected; and

(4) Total not collected. The report will provide a dollar amount for each of the categories below for which payment was not received:

(i) Amount of coverage (e.g., policy only pays 80%);

(ii) Payment reduced due to pre-admission review, concurrent review, discharge planning and second surgical opinion;

(iii) Care provided not covered under the provisons of the policy (covered by a prepaid plan that only covers emergency care outside the plan, pre-existing conditions, cosmetic exclusions and dental care);

(iv) Policy expired, Non-existent or patient not a named beneficiary on the policy;

(v) Policy not entered into, renewed or modified subsequent to April 7, 1986; and

(vi) Other reasons (specify).

(i) This part does not authorize collections in the case of a plan administered under Title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.)

(j) The Secretary of the Military Department that provided care covered by this part, or the Secretary's designee may compromise, settle or waiver a claim of the Department of Defense under 10 U.S.C. 1095 and this part.

(k) The Secretary of the Military Department that provided care covered by this part, or the Secretary's designee, shall normally request the Department of Justice to institute and prosecute legal proceedings to collect amounts due under this part when administrative efforts to collect such amounts are unsuccessful.

§ 220.6 Responsibilities.

The Military Departments shall be responsible for developing procedures to implement this Coordination of Benefits Program.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22792 Filed 10-7-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3093-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by three petitioners to exclude their solid wastes from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to deny the exclusion of certain wastes generated at three facilities from listing as hazardous wastes under 40 CFR Part 261, and revoke the temporary exclusions of certain wastes generated at these three facilities. Thus, the petitioned wastes at the three facilities proposed to be denied would then be considered hazardous.

The Agency has previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, all of these petitioner were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed denials until October 23, 1986. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 23, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number: "F-86-ANEP-FFFFF".

The public docket for this proposed rule is at the U.S. Environmental Protection Agency, 401 M Street SW. (Sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of

hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may very, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the list description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 3260.22(a) and the background document for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators ramain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to waste listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the domonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or if, present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balanced arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on repesentative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetic receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule

Continued

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to deny the exclusion petitions for the wastes from three petitioners.

It should be noted that EPA has not verified the submitted test data. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the Agency will not make a final decision on the petitions proposed to be denied today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed denials published today are for the following petitioners:

American Nickeloid Co., Lima, Illinois;
AT&T Technology Systems, Richmond, Virginia;
John Deere Des Moines Works, Des Moines, Iowa.

I. American Nickeloid Company

A. Petition for Exclusion

American Nickeloid Company (Nickeloid) manufactures pre-plated metal sheet and coil and pre-finished vinyl/metal laminates at its Lima, Illinois facility. Nickeloid has petitioned the Agency to exclude wastewater treatment sludges impounded in three surface impoundments at this facility. These sludges are listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc or aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Nickeloid originally submitted their petition on July 30, 1981. Based on the Agency's review (at that time), a temporary exclusion was granted on December 16, 1981 for the F006 and K062 wastes impounded in the drying lagoon at this facility (see 46 FR 61277).[3] The basis for this decision was that the constituents of concern, although present in the waste, were present in essentially an immobile form. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed originally if the Agency has a reasonable basis to believe that such constituents could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 691(f).) In anticipation of these changes, and as a result of new requirements, the Agency requested additional information from Nickeloid. This information was submitted by Nickeloid on November 6, 1985. The Agency, therefore, has re-evaluated Nickeloid's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria, and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

Nickeloid has submitted descriptions of its manufacturing and waste treatment processes; total constituent and EP toxicity test results for cadmium, total chromium, and nickel; total oil and grease analyses; test results for total, reactive and free cyanide; and results from a distilled water leaching test for cyanide. Nickeloid has also submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and a list of raw materials used in the processes at this facility. The Agency requested most of this information, as noted above, to determine whether constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Nickeloid produces a variety of pre-finished and pre-plated metals and vinyl-to-metal laminates. The metal sheets and coils are cleaned with caustic, electrocleaned, brightened with an acid dip, and phosphated. A chromate conversion coating is applied to the metal before brass and cooper are electroplated onto the metal. The plated metal is then polished and coated with a baked protective finish. The lamination process involves the use of high temperatue adhesives to join vinyl films to metal substrates. Nickeloid claims that all paints, lacquers, adhesives, and solvents are segregated from the petitioned waste stream, and are therefore not expected to be present in the waste.

Rinse and blowdown waters from the aluminum conversion coating processes are collected in treatment tanks, where hexavalent chromium is reduced to trivalent chromium with sodium bisulfite. When indicator test show the reaction to be complete, the pH is adjusted to 9.0 to precipitate hydroxide

(see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] The waste is no longer classified as a K062 waste. See 51 FR 19320, May 28, 1986, for a clarification of the K062 hazardous waste listing.

sludges. The sludges are routed to a vertical leaf filter for solids removal and off-site disposal, and the effluent is discharged to the impoundment system (Lower Lagoon).

Cooper and brass plating wastes (from fume scrubbers and carbonate contral equipment) are alternately retained in two concrete tanks and treated with chlorine. The pH is held constant at 8.5–9.5 until cyanide oxidation is complete; pH is then adjusted to 8.0 and additional chlorine is added to ensure the complete destruction of cyanide. A final pH adjustment to 11.5 is made and the waste is routed to the Upper Lagoon, which allows cooper and zinc hydroxides to precipitate.

Nickel-bearing, acidic finishing wastes are collected in a treatment tank, and sodium sulfide is added by hand to precipitate insoluble nickel sulfide. The waste is then routed to an acid neutralization tank, where it is combined with acid wastes from sheet and lacquer lines. Here the wastes are treated with lime to adjust pH to a range of 9.0–10.0, which precipitates iron and nickel hydroxides. The waste is discharged to the Upper Lagoon to allow the solids settle.

The lagoon system is comprised of three lagoons, the Upper and Lower Lagoons, and the Drying Lagoon. Acid neutralization wastes and cyanide treatment wastes are discharged to the Upper Lagoon, and effluent from the Upper Lagoon flows into the Lower Lagoon for polishing before discharge under an NPDES permit to the Illinois River. The Lower Lagoon also receives treated chromium-bearing wastes from conversion coating processes, as well as non-hazardous process wastes (including cleaner rinsewater, polish rinsewater, air scrubber discharge, and boiler blowdown). An anionic polymer is added to the non-hazardous waste stream to aid in flocculation of solids in the lagoons. The water levels in the Upper and Lower Lagoons are lowered once each year to allow the sludges to be pumped to the Drying Lagoon. Drying Lagoon sludges are allowed to dry for several months before disposal at a permitted disposal facility.

Nickeloid's original demonstration was based on samples taken from the Drying Lagoon on June 23, 1981. For purposes of further testing, Nickeloid collected additional samples from all three lagoons during May and July 1985. Sludge samples were collected by dividing each lagoon into 4 quadrants, then taking five complete-depth core samples from each quadrant. The Upper and Lower Lagoons were sampled with a Coliwasa (liquid waste sampler), while the dried Drying Lagoon sludges were sampled with a shovel. These samples were then composited into a single sample for each quadrant.

Nickeloid claims that the composite samples are representative of the waste due to the consistent nature of the production and treatment processes. Nickeloid further claims that raw materials used in the process do not change over time, and that the samples taken adequately characterize the impounded wastes. Nickeloid also claims that the sampling performed was sufficient to evaluate the entire depth of the impoundment.

The total constituent and EP toxicity leachate analyses for the listed constitutents in the sampled sludges resulted in the maximum concentrations shown in Table 1. The total constituent and EP toxicity analyses for the non-listed constituents and EP toxicity analyses for the non-listed constitutents produced the maximum concentrations given in Table 2.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)[1]

Constituents	Upper lagoon		Lower lagoon		Drying lagoon	
	Total	EP	Total	EP	Total	EP
Cd	5	<0.01	3	<0.01	6	0.02
Cr(total)[2]	820	0.06	3694	0.03	2245	0.03
Ni	7560	18.99	3147	8.14	3030	5.5
CN^-(total)	326.97	2.4	76.1	0.3	682	2.57
CN^-(free)	2.18	([3])	8.98	.....	109	.....
CN^-(reactive)	0.7	.....	3.7	.....	31.1	.....

[1] Cyanide EP extractions performed by distilled water leachate test.
[2] The Agency also considers total chromium in the EP analysis, although hexavalent chromium is the listed constituent of concern. Since the concentration of total chromium in the EP leachate must exceed that of hexavalent chromium, characterization of hexavalent chromium in the sludges was not necessary.
[3] Free and reactive cyanide tests are not applicable to analysis of EP leachate.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Constituents	Upper lagoon		Lower lagoon		Drying lagoon	
	Total	EP	Total	EP	Total	EP
As	<0.5	<0.002	<0.5	<0.5	<2	<0.004
Ba	480	0.72	170	0.29	55	<0.1
Pb	107	<0.1	72	<0.1	74	0.15
Hg	0.4	<0.001	0.68	0.001	0.5	<0.001
Se	17	<0.005	<0.6	<0.06	<3.2	<0.001
Ag	15	0.05	5	<0.03	11	0.002

Maximum oil and grease content of any of the lagooned sludges was 8770 ppm. None of the samples tested demonstrated the characteristics of hazardous waste (*i.e.*, ignitability, corrosivity, reactivity, or EP toxicity). Examination of the material safety data sheets for compounds used in the manufacturing process indicated that only one additional Appendix VIII hazardous constituent, hydrofluoric acid, would be contributed to the waste in significant quantities by the feedstocks used in Nickeloid's processes. This compound is present (5.3 percent) in a replenishing chemical used in the conversion coating process. The wastewater treatment system, which uses an alkaline pH to precipitate insoluble metallic hydroxides, also precipitates fluoride ions as sodium fluoride. This salt is removed by flocculation and clarification, along with other salts, in the treated waste; hydrofluoric acid, therefore, is not expected to be present in significant quantities in the waste. Nickeloid estimates that the Upper Lagoon, Lower Lagoon, and Drying Lagoon presently contain 200 cubic yards, 500 cubic yards, and 400 cubic yards of sludge, respectively. Nickeloid has indicated that it could generate a maximum volume of 3,200 total cubic yards of sludges annually.

B. Agency Analysis and Action

Nickeloid has not demonstrated to the Agency that the sludges residing in the three impoundments at its Lima facility are non-hazardous. The Agency believes that the composited samples, claimed to represent the complete depths of the impoundments, have adequately characterized any vertical or horizontal variation in constituent concentration of the impounded sludges in the upper and lower lagoons. The Agency also believes that the compositing performed by Nickeloid has not concealed variations in constituent concentrations, and that the processes contributing to the formation of these wastes are reasonably consistent over time. The Agency believes that the samples presented for the upper and lower lagoons are representative of the waste generated by Nickeloid. The Agency is concerned, however, that the sampling method used in the drying lagoon may not have been sufficient to characterize any stratification since complete depth cores were not collected.

The Agency has evaluated the

mobility of the inorganic constituents of Nickeloid's waste using the vertical and horizontal spread (VHS) model.[4], [5] The Agency's evaluation of Nickeloid's 1100 cubic yards of impounded wastes [6] and the maximum EP extract levels for the listed constituents reported in the petition has produced the compliance point concentrations shown in Table 3. The Agency's evaluation of the non-listed constituents of the impounded waste generated the compliance point concentrations shown in Table 4.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	VHS model: impounded sludges	Regulatory standards
Cd	0.0014	0.01
Cr	0.0041	0.05
Ni	1.30	0.35
CN	0.18	0.2

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	VHS model: impounded sludges	Regulatory standards
As	<0.0034	0.05
Ba	0.049	1.0
Pb	0.010	0.05
Hg	0.000069	0.002
Se	0.0041	0.01
Ag	0.0034	0.05

Cadmium and chromium levels at the compliance point were not found to exceed the National Interim Primary Drinking Water Standards for these metals. Leachable cyanide levels are below the U.S. Public Health Service's suggested drinking water standard.[7] Nickel values, however, were found to exceed the Agency's interim criterion and are, therefore, of regulatory concern.[8] [9]

The Agency's evaluation of cyanide in the waste indicates that cyanide may be an additional reason of concern. High concentrations of total cyanide (682 ppm), free cyanide (109 ppm) and reactive cyanide (31.1 ppm) have been documented in the impounded sludges. The Agency believes that these cyanide concentrations may indicate a potential problem in the waste treatment system, since the treatment system on-line as Nickeloid's facility contains a cyanide destruction sequence that is intended to oxidize cyanides. Nickeloid had claimed the cyanide destruction capacity of this sequence to be 99.99 percent efficient; the data collected by Nickeloid does not support this claim. The large amounts of total (and leachable) cyanides present in this waste (probably ferrocyanides) are of concern to the Agency, although the VHS analysis indicates that cyanide may be predicted to cause groundwater contamination at levels slighty less than the Agency's regulatory maximum.[10]

None of the other non-listed constituents were found to exceed their respective regulatory standards. The Agency believes that the low compliance point concentrations of these metals indicates that these metals are not of regulatory concern.

In addition, the Agency has concluded, based on a review of material safety data sheets and a list of raw materials used by Nickeloid in its manufacturing process, that no other hazardous constitutents (except as described earlier) are present in the impounded sludges.

The Agency believes that the wastes generated from the manufacturing processes at Nickeloid's facility and impounded at this same facility are not rendered non-hazardous by the waste treatment system currently in use. The analysis of the sludge using the VHS model indicates the potential of the sludge to leach nickel and contaminate ground water. The Agency, therefore, proposes to deny this petition for exclusion of the wastewater treatment sludges impounded at American Nickeloid Company's facility in Lima, Illinois. The Agency also proposes to revoke the temporary exclusion held by American Nickeloid for the Drying Lagoon sludges.[11]

II. AT&T Technology Systems

A. Petition for Exclusion

AT&T Technology Systems (AT&T), located in Richmond, Virginia, is involved in electroless copper plating, and copper, nickel, gold, and solder electrolytic plating of printed circuit boards. AT&T has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). AT&T has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which it was listed.

Based upon the Agency's review of their petition, AT&T was granted a temporary exclusion for their filtered sludge on November 22, 1982 (see 47 FR 52673). The basis for granting the exclusion, at that time, was the low concentration of chromium, cyanide, and nickel, and the absence of cadmium in the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

[4] See 50 *FR* 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 *FR* 48896, Appendix, November 27, 1985.

[5] Since the Agency has not yet proposed the application of the VHS model to surface impoundments, this evaluation is based upon the landfill application of the model. If the surface impoundment application is proposed prior to the publication of the Agency's final decision on Nickeloid's waste, this petition will be subject to re-evaluation and, if warranted, re-proposal.

[6] This volume represents the total sludge volume presently in Nickeloid's lagoons, which is less than the annual maximum volume of sludge that may be generated by Nickeloid. Where a facility has more than one on-site impoundment in close proximity to each other, the Agency has concluded that their impact on any underlying aquifer will be considered collectively as a single contaminating source. The VHS analysis therefore is performed using the combined total sludge volume of all of the impoundments.

[7] See Drinking Water Standards, U.S. Public Health Service, Publication 956 (1962).

[8] Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard is explained at 50 *FR* 20239–48, May 15, 1985. Also the Agency has collected enough statistically defensible data from its ongoing nickel toxicity study to indicate that the interim standard of 0.35 ppm will decrease.

[9] The upper limit to the 95 percent confidence interval for the nickel extract concentrations from the lagooned wastes was also used in the VHS model.The calculated compliance point concentration of 0.56 mg/1 also exceeded the Agency's standard.

[10] The Agency has also made a separate evaluation of the Drying Lagoon sludges, because the sludges in both the Upper and Lower Lagoons will be placed in the Drying Lagoon for further dewatering prior to off-site disposal. The Agency has used the EP leachate concentrations of the Drying Lagoon sludges (rather than the analytical maximum for the impoundment as a unit) in conjunction with the volume of sludge stored on-site (1,100 cubic yards) in the VHS model. The evaluation indicates that nickel will still be expected at the compliance point at levels greater than the Agency's interim standard (0.38 mg/l vs. 0.35 mg/l). Additional drying of these lagooned wastes, then, would be expected to produce a dried waste which would still leach nickel and produce ground-water contamination in excess of the Agency's standards.

[11] American Nickeloid was notified, in a letter dated April 30, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Nickeloid's petition be denied due to the potential of the impounded sludges to leach nickel and contaminate ground water. Nickeloid was given the option of withdrawing its petition, but did not exercise this option.

(See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from AT&T. This information was submitted on April 15, 1985; November 18, 1985; January 6, 1986; April 17, 1986; and July 2, 1986. As a result, the Agency has re-evaluated AT&T's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) Determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the Agency's re-evaluation of AT&T's petition.

AT&T submitted a detailed description of its electroplating and wastewater treatment processes (including schematic diagrams); total constituent analyses and EP toxicity test results for the EP toxic metals; and total oil and grease analyses of representative waste samples.[12] In addition, AT&T submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

AT&T's manufacturing process includes electroless copper plating, and copper, nickel, gold, and solder electrolytic plating. AT&T's waste treatment system involves chromium reduction through the addition of bisulfite; neutralization; polymer flocculation; clarification; and vacuum filtration. Dewatered sludge then is discharged to a large dumpster prior to disposal.

AT&T claims that its wastewater treatment process generates a non-hazardous sludge because cadmium is not used in the process; only small quantities of cyanide are present in their gold plating operation, thus, no cyanide treatment is necessary due to very low influent concentrations; and that nickel is plated under gold in only small quantities. Furthermore, AT&T claims although chromium and nickel are present in the waste, they are essentially in an immobile form. AT&T also claims that this waste is not hazardous for any other reason.

AT&T collected 1-gallon samples of the sludge as it exited the rotary drum vacuum filter. The petitioner claims that the vacuum filter sludge source is a 66,000-gallon holding tank that is well-mixed and ensures a homogeneous and representative sample. Eight samples were collected weekly from October 3, 1985 to December 6, 1985 (excluding the week of November 25, 1985) and analyzed for total and leachable concentrations of the EP toxic metals.[13] AT&T later questioned the analytical accuracy of these eight samples and provided split sample results for leachable lead obtained by their in-house wastewater treatment laboratory. Split sample results were not provided for the other EP toxic metals. AT&T collected an additional eight samples in April and May 1986 and analyzed these samples for leachable barium, chromium, lead, mercury, and nickel. In addition, the EPA sampling team conducted a spot check sampling visit in November 1983. Two composite samples were collected from a dumpster containing sludge from one or possibly two press operations, and analyzed for total and leachable concentrations of the EP toxic metals and nickel, and the priority pollutants.[14]

AT&T claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. The petitioner has verified that all of the plating lines were in operation during the sampling period. The petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line, and therefore, all raw materials used in the process are represented by the samples collected.

Total constituent and EP toxicity analyses of the filter sludge for the listed and non-listed constituents as reported by AT&T revealed the maximum concentrations reported in Tables 1 and 2, respectively. Total constituent analysis results reported are for the eight samples collected in 1985; the eight 1986 samples were not analyzed for total concentrations. Since analytical accuracy of the EP leachate tests for the 1985 samples was questionable, maximum leachable concentrations reported in Tables 1 and 2 are for the split samples analyzed for leachable lead levels and the 1986 samples.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Cadmium	(1)	
Chromium (total)	240	<0.05
Nickel	723	8.66
Cyanide		

[1] AT&T did not provide cadmium or cyanide data for samples collected in 1985 and 1986.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	(1)	
Barium	25	0.160
Lead	3,820	1.86
Mercury		0.012
Selenium		
Silver		

[1] AT&T did not provide arsenic, selenium, silver, and total mercury data for samples collected in 1985 and 1986.

Total constituent and EP toxicity analyses of the filter press sludge for the listed and non-listed constituents from samples collected during EPA's visit are reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Cadmium	<5	<0.025
Chromium (total)[1]	1,600	<0.20
Nickel	890	6.1
Cyanide	3.5	[2] 0.18

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[2] Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solid diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

TABLE 4.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<10	<0.02
Barium	150	2.0
Lead	6,800	1.4
Mercury	2.8	<0.001
Selenium	<10	<0.05
Silver	7.1	<0.02

The maximum total oil and grease content reported was 0.12 percent. AT&T also submitted a list of all raw materials used in their manufacturing

[12] AT&T's process has undergone changes since the original petition of March 20, 1981, including the reduction of lead and nickel mobility and the elimination of coagulants in the wastewater treatment process. New test results were requested in October 1985, for EP toxic metals, percent solids, and oil and grease. The Agency presently is evaluating AT&T's petition to determine whether these process changes affect the status of AT&T's temporary exclusion. The Agency also is preparing general guidance for defining process changes and their effect on temporary and final exclusions.

[13] Other data were provided in the original petition and in response to subsequent EPA requests. EP data for all the EP toxic metals are available for 2 samples taken on February 27, 1979 and October 7, 1980; EP data for total chromium for 4 samples in 1981; and EP data for nickel for 18 samples from January to March 1982. Due to process changes in 1984 and 1985, AT&T requested that the Agency evaluate only the 16 samples taken in 1985 and 1986, since the contaminant levels have decreased since 1979.

[14] Although the spot check visit was conducted prior to process changes, the Agency believes that the vacuum filter sludge composition has not changed significantly, and therefore, the samples obtained from this spot check visit are representative of AT&T's waste.

and wastewater treatment processes. This list indicated that thiourea and formic acid (Appendix VIII constituents) are used in the process. AT&T submitted information that can be used to show that thiourea and formic acid are each less than 0.001 percent of wastewaters annually sent to the treatment process. AT&T, however, did not submit analytical data quantifying levels of thiourea and formic acid in the sludge. Methylene chloride and 1,1,1-trichloroethane also are used at the facility, but AT&T claims that these compounds are not discharged to the wastewater treatment process, but are sent through a solvent recovery system. Organics analysis conducted by EPA identified chloroform and 1,1,1-trichloroethane in the sludge. Maximum concentrations for these constituents in the sludge are reported in Table 5.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS PRESENT IN THE FILTER PRESS SLUDGE (PPM)

Constituents	Total constituent analyses
Chloroform	0.590
1,1,1-Trichloroethane	2.6

AT&T also provided information indicating that the vacuum filter sludge is not ignitable, corrosive, or reactive. AT&T claims that it generates a maximum of 960 tons of waste annually from its vacuum filter.

B. Agency Analysis and Action

AT&T has not demonstrated that the waste treatment sludge generated from its vacuum filter is non-hazardous. The Agency believes that the 16 grab samples that were taken from the filter press in 1985 and 1986 and the additional samples collected during EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the waste petitioned for exclusion. The key factor that could vary toxicant concentrations in this waste would be in the use of different raw materials due to changes in the product line being manufactured. Variations in the raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonally. Since AT&T is not a job shop, nor does it have seasonal product changes, the Agency believes that AT&T's sampling period was long enough to cover any scheduled changes in the product line. The Agency believes, therefore, that the samples collected by AT&T are representative of their waste.

The Agency has evaluated the mobility of the listed constituents from AT&T's waste using the vertical and horizontal spread (VHS) model.[15] The VHS model generated compliance point values using the 960 tons per year maximum generation rate and the maximum extract levels reported by AT&T and EPA as input parameters. These predicted compliance point concentrations are exhibited in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.0015	0.01
Chromium (total)	<0.012	0.05
Nickel	0.52	0.35
Cyanide	0.01	0.2

The vacuum filter sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[16] The cyanide content (3.5 ppm) also is low enough to not be of regulatory concern from an air contamination route since it is below the 10 ppm workplace air standard set by the American Conference of Governmental Hygienists.[17] (The capability of a cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern. The predicted maximum nickel level, however, exceeds the Agency's interim health advisory.[18]

In addition, the Agency calculated the upper limit of a 95 percent confidence interval for the EP leachate nickel data reported by AT&T and EPA.[19] This value (*i.e.*, 5.92 ppm) when used as an input to the VHS model also generated a compliance point concentration that exceeded the regulatory standard for nickel. Nickel levels in the vacuum filter sludge, therefore, are of regulatory concern.

Compliance point values also were calculated for the non-listed EP toxic metals and are displayed in Table 7.

TABLE 7—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.001	0.05
Barium	0.12	1.0
Lead	0.11	0.05
Mercury	0.0007	0.002
Selenium	<0.003	0.01
Silver	<0.0012	0.05

The vacuum filter sludge exhibited arsenic, barium, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards. These constituents, therefore, are not of regulatory concern. The predicted maximum lead level, however, exceeds the National Interim Primary Drinking Water Standard for lead. The Agency also determined the mean and upper limit of a 95 percent confidence interval for lead using the data submitted by AT&T and EPA, and used these concentrations (*i.e.*, 0.87 and 1.09 ppm, respectively) as VHS model inputs. The calculated compliance point concentrations (*i.e.*, 0.052 and 0.066 ppm, respectively) also exceeded the regulatory standard for lead. Lead levels, therefore, are of regulatory concern.

The Agency also reviewed AT&T's raw material list and material safety data sheets for each component in the raw material list. The Agency has concluded that thiourea and formic acid are not the only Appendix VII hazardous constituents used in AT&T's process. AT&T did not provide analytical data quantifying levels of thiourea and formic acid in the sludge. In addition, AT&T did not explain the presence of chloroform and 1,1,1-trichlorethane in the sludge. The Agency also has evaluated the mobility of the organic constituents reported for the samples collected during the spot check sampling visit using the VHS model. The VHS model generated compliance point values using the 960 tons per year maximum generation rate and the

[15] See footnote 4.

[16] See footnote 7.

[17] See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, third edition, 1971, Cincinnati, Ohio.

[18] See footnote 8.

[19] For a discussion of the Agency's use of the upper limit of a 95 percent confidence interval, see 50 *FR* 48917, November 27, 1986.

maximum concentrations of organics predicteds by the Agency's organic leachate model.[20] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

TABLE 8—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Chloroform	0.042	0.059	0.0025	0.0036	0.0005
1,1,1-Tri-chloroethane	0.062	0.079	0.004	0.004	1.2

The calculated compliance point concentration for chloroform exceeded the regulatory standard of 0.0005 ppm.[21] The calculated concentration of 1,1,1-trichloroethane was below the corresponding standard.

The Agency believes that AT&T's treatment process generates a hazardous waste that should not be excluded from hazardous waste control. The prediction of maximum nickel and lead levels (at the compliance point) using the VHS model reveals concentrations that exceed the regulatory standards and indicates a potential for the vacuum filter sludge to leach nickel and lead and contaminate ground water. Chloroform levels (at the compliance point) predicted using the VHS model also exceed the regulatory standard and indicate a potential for harming human health and the environment. Finally, the Agency also is proposing to deny the petition on the basis that it is incomplete (*e.g.*, AT&T did not substantiate whether or not thiourea and formic acid are present in the waste at levels of regulatory concern nor did they explain the presence of chloroform and 1,1,1-trichloroethane in the sludge). The Agency, therefore, proposes to deny this petition for exclusion of the dewatered wastewater treatment sludges generated by AT&T Technology Systems (AT&T) at its Richmond, Virginia facility.

[20] See 50 FR 48953–48966, November 27, 1985 for an explanation of the procedures used to estimate the concentration of organic compounds in the leachate. See also 51 FR 27061, July 29, 1986, for an explanation of the Agency's newly proposed OLM.

[21] Chloroform was detected in both samples collected by EPA. Using the VHS model, both calculated compliance point concentrations exceeded the regulatory standard.

III. John Deere Des Moines Works

A. Petition for Exclusion

John Deere Des Moines Works (John Deere), located in Ankeny, Iowa, is involved in the manufacture of farm equipment and machinery. John Deere has petitioned the Agency to exclude its dewatered waste-water treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wasterwater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). John Deere has petitioned to exclude its wastewater treatment sludge because they claim it does not meet the criteria for which it was listed.

Based upon the Agency's review of their petition, John Deere was granted a temporary exclusion on November 25, 1980 (see 45 fR 78550). The basis for granting the exclusion, at that time, was the immobile nature of cadimum and chromium and the low levels of nickel and cyanide in the sludge. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agnecy has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from John Deere. This information is available in the public

docket. As a result, the Agency has re-evaluated John Deere's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) Evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is the Agency's re-evaluation of John Deere's petition.

In support of its petition, John Deere submitted a detailed description of the manufacturing and wastewater treatment processes (including schematic diagrams); a list of raw materials used in the manufacturing processes; and material safety data sheets for all raw materials used in the manufacturing and treatment processes.[22] John Deere also submitted total constituent analyses and Oily Waste EP toxicity test results for the EP toxic metals and nickel and analytical results for total and reactive cyanides, reactive sulfides, total oil and grease, and total phenol on representative waste samples. Furthermore, John Deere submitted results of analyses for the 129 priority pollutants, 17 organic constituents listed from paint formulating, and Appendix VIII hazardous constitutents identified as raw materials used in John Deere's manufacturing process that might be present in John Deere's wastewater treatment sludge. The Agency requested much of this information, as noted above, to determine if toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

John Deere's manufacturing processes include metal machining and heat treating, iron and zinc phosphate coating, metal cleaning, metal painting, and chrome and zinc electroplating. The industrial wastewater that is generated from the various manufacturing processes is collected and treated in John Deere's wastewater treatment facility. Treatment of the wastewater involves equalization, free floating oil removal, chrome reduction using sulfuric acid and sodium metabisulfite, lime and acid neutralization, polymer flocculation, filtration, and clarification. The wastewater treatment sludge is pumped into a mixing chamber, and then into a rotary vacuum filter tank, where it receives additional mixing and is dewatered. The homogeneous mixture of dewatered sludge is released to a conveyor belt and is stored in a collection hopper prior to disposal.

John Deere combines several waste streams into their treatment system. These include wastewaters from the manufacturing processes and miscellaneous utilities such as noncontact process cooling and boiler blowdown. Approximately half of the wastewater is generated from electroplating operations. These combined streams generate a maximum of 1,050 tons of sludge annually. The average solids content of the sluge is 37.6 percent.

John Deere claims that the wastewater treatment process generates a non-hazardous sludge because cadmium, chromium, and nickel are present in an essentially immobile form. In addition, John Deere claims that nickel and cyanide are not used in the plating processes. The only source of cyanide is in a complexed form in a ferriferrocyanide pigment from metal painting operations; however, John Deere claims that the ferriferrocyanide pigment present in the paint formulation is stable and does not readily break down to hydrogen cyanide which is of major concern due to its toxicity. John Deere further claims that the wastewater treatment sludge is not hazardous for any other reason.

John Deere's demonstration originally was based on 11 samples of the sludge collected from the conveyor belt discharge point following vacuum filtration at random times over a 1-month period. These 11 samples were analyzed for cadmium, chromium, lead, zinc, nickel, barium, total phenol, and total and amenable cyanide. Historical test results using the Iowa Department of Environmental Quality Leachate Test also were submitted in the original demonstration.[23] For the purposes of further testing, John Deere collected four additional core samples of dewatered sludge over a 2-week period from the vacuum filter collection hopper. As requested by the Agency, John Deere used the Oily Waste EP Test procedure to analyze the vacuum filter sludge for leachable levels of the EP toxic metals and nickel because the oil and grease content of the sludge exceeded one percent. (The original 11 samples were not subjected to the Oily Waste EP Test.) These additional four samples, therefore, are the samples used to re-evaluate the petition. John Deere claims the samples are representative of any variation of constituents in the waste because the sludge was well-mixed and sampling was random. In addition, the petitioner claims that the facility was in normal, day-to-day operation during sampling.

Total constituent and Oily Waste EP toxicity analyses of the vacuum filter sludge for the listed constituents revealed the maximum concentrations reported in Table 1. The Oily Waste EP procedure was used because the sludge's oil and grease content was reported at values up to 59 percent.

The total constituent and Oily Waste EP toxicity analyses of the vacuum filter sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM CONCENTRATIONS

[Parts per million]

Listed constituents	Total constituent analyses	Oily waste EP leachate analyses
Cadmium	23	<0.1
Chromium (total) [1]	19,000	<0.5
Nickel	1,600	22
Cyanide	6.0	[2] 0.3

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the Oily Waste EP leachate concentration is low enough to make a determination of hexavalent chromium unnecessary.

[2] John Deere did not analyze the vacuum filter sludge for leachable cyanide. The maximum leachable cyanide concentration was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

<Denotes concentrations below the detection limit.

TABLE 2.—MAXIMUM CONCENTRATIONS

[Parts per million]

Non-listed constituents	Total constituent analyses	Oily waste EP leachate analyses
Arsenic	<19	<0.5
Barium	1,300	<1.0
Lead	3,700	0.60
Mercury	<1	<0.06
Selenium	<19	<0.1
Silver	5.7	<0.5

<Denotes concentrations below the detection limit.

John Deere also analyzed the vacuum filter sludge for reactive sulfides; the maximum concentration in the sludge was 600 ppm. John Deere also analyzed the vacuum filter sludge for the 129 priority pollutants, 17 organic constitutents listed from paint formulating, and the Appendix VIII constituents identified as raw materials used in the manufacturing processes that might be present in the vacuum filter sludge. The maximum concentrations of those organic pollutants detected in the vacuum filter sludge are presented in Table 3.

[22] John Deere has claimed the raw materials list and the material safety data sheets as confidential business information (CBI). This information, therefore, is not available in the public docket.

[23] John Deere claims that the Iowa Department of Environmental Quality Leachate Test conforms to SW-846 requirements.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS PRESENT IN THE VACUUM FILTER SLUDGE (PPM)

Compound	Total constituent analyses
Benzo(a)pyrene	26
Bis(2-ethylhexyl)phthalate	39
Butyl benzyl phthalate	20
Chlorobenzene	0.021
Chloroform	0.023
Di-n-butyl phthalate	3.7
Diethyl phthalate	5.9
Methyl ethyl ketone	0.24
Methylene chloride [1]	0.013
Naphthalene	5.4
Tetrachloroethane	0.032
Toluene	0.064
1,1,1-Trichloroethane	0.018
Trichloroethene	0.047

[1] Methylene chloride detected in field blank at 0.012 ppm.

John Deere also provided test data indicating that the vacuum filter sludge is not ignitable or corrosive.

B. Agency Analysis and Action

John Deere has not demonstrated to the Agency that the vacuum filter sludge produced by the wastewater treatment system is non-hazardous. The Agency believes that the vacuum filter sludge samples taken from John Deere's treatment system were non-biased and adequately characterize any variation that may occur in the waste petitioned for exclusion. Both the production and treatment processes are consistent over time. The facility does not act as a job shop nor does it have seasonal product changes; therefore, the waste is uniform from week to week and the samples taken from the vacuum filter hopper are representative of the waste as disposed. The Agency, therefore, believes that the samples collected by John Deere are representative of their waste.

The Agency has evaluated the mobility of the listed constituents from John Deere's waste using the vertical and horizontal spread (VHS) model.[24] The VHS model generated compliance point values using the 1,050 tons per year maximum generation rate and the maximum reported extract levels as input parameters.[25] These compliance point concentrations are exhibited in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.007	0.01
Chromium (total)	<0.03	0.05
Nickel	1.45	0.35
Cyanide	0.02	0.2

The vacuum filter sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards; and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[26] The waste's maximum cyanide content (6.0 mg/kg) also is low enough so as not to be of regulatory concern from an air contamination route. That is, the Agency believes cyanide levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[27] (The capability of a cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern. The waste's maximum sulfide level (600 mg/kg), however, is of regulatory concern with respect to hydrogen sulfide gas generation. The waste is considered reactive due to its high content of reactive sulfide.[28] The sludge, in addition, exhibits nickel levels in excess of the Agency's interim health advisory, and this constituent also is, therefore, of regulatory concern.[29]

The Agency also concluded, through using the VHS model, that no other EP toxic metals, with the exception of mercury, are present in the vacuum filter sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 5. The detection limit used for mercury analysis was not sufficient to prove that levels of mercury pass the VHS model evaluation. In the event that John Deere makes significant process changes and submits a new petition, mercury analysis would have to be conducted using a lower detection limit.

TABLE 5.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.03	0.05
Barium	<0.07	1.0
Lead	0.04	0.05
Mercury	<0.004	0.002
Selenium	<0.007	0.01
Silver	<0.03	0.05

The Agency has also evaluated the mobility of organic constituents detected in the vacuum filter sludge using the VHS model. The VHS model generated compliance point values using the 1,050 tons per year maximum generation rate and the maximum reported concentration of organics predicted by the Agency's organic leachate model.[30] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 6.

TABLE 6.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	Baseline	95 percent	Baseline	95 percent	
Benzo(a)pyrene	0.0016	0.0025	0.0001	0.0002	3×10^{-6}
Bis(2-ethylhexyl)-phthalate	0.0180	0.0233	0.0012	0.0015	0.70
Butyl benzyl phthalate	0.0237	0.0294	0.0016	0.0019	NS
Chlorobenzene	0.0014	0.0022	9.2×10^{-5}	0.0001	1.1
Chloroform	0.0044	0.0068	0.0003	0.0004	5×10^{-4}
Di-n-butyl phthalate	0.0132	0.0165	0.0009	0.0011	3.5
Diethyl phthalate	0.0985	0.1104	0.0058	0.0073	350
Methyl ethyl ketone	0.0848	0.1307	0.0056	0.0086	1.8
Methylene chloride	0.0043	0.0069	0.0003	0.0004	0.056
Naphthalene	0.0240	0.0295	0.0016	0.0019	NS

[24] See footnote 4.

[25] The Agency requests that OWEP analyses be run on wastes which have oil and grease levels greater than 1 percent. The Agency has used OWEP data provided by John Deere in the VHS model evaluation.

[26] See footnote 7.

[27] This conclusion is based upon the results of air dispersion calculations. A copy of these calculations is available in the public docket for this notice.

[28] See internal Agency memorandum dated July 12, 1985 entitled "Interim Thresholds for Toxic Gas Generation Reactivity." (In RCRA public docket.) Wastes with a reactive sulfide content in excess of 500 ppm may be considered hazardous by the reactivity characteristic.

[29] See footnote 8. In addition, the Agency determined the upper limit of a 95 percent confidence interval for the nickel data submitted by John Deere. This value (21.3 ppm) resulted in a compliance point concentration which also exceeded the regulatory standard for nickel.

[30] See footnote 20.

TABLE 6.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE—Continued

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	Baseline	95 percent	Baseline	95 percent	
Tetrachloroethene	0.0013	0.0019	8.6×10^{-5}	0.0001	6.9×10^{-4}
Toluene	0.0034	0.0049	0.0002	0.0003	10.5
1,1,1-Trichloroethane	0.002	0.0031	0.0001	0.0002	1.2
Trichloroethene	0.0036	0.0053	0.0002	0.0003	0.0032

NS = No regulatory standard available for comparions.

With the exception of benzo(a)pyrene, the predicted compliance point for thee compounds are below their respective regulatory standards. The presence of these compounds at the reported concentrations, therefore, is not of regulatory concern. The calculated compliance point concentration for benzo(a)pyrene, however, exceeded the regulatory standard.[31]

The Agency believes that the waste generated by the manufacturing processes at John Deere Des Moines Works is not rendered non-hazardous by the waste treatment process currently in use. The prediction of nickel levels (at the compliance point) using the VHS model reveals a concentration that exceeds the Agncy's Interim Health Advisory and indicates a potential for the vacuum filter sludge to leach nickel and contaminate ground water. In addition, benzo(a)pyrene levels (at the compliance point) predicted using the VHS model exceed the regulatory standard and indicate a potential for harming human health and the environment. The Agency, therefore, proposes to deny this petition for exclusion of the wastewater treatment sludge generated by John Deere Des Moines Works at its Ankeny, Iowa facility.

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the three petitioners included in this notice who may have their temporary exclusions revoked and final exclusions denied. They would have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials would be six months after publication of the final rule in the **Federal Register.**

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke temporary exclusions and deny petitions from four facilities is not major. The effect of this proposal would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these four facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $1.6 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only affects three facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

The regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 2, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–22828 Filed 10–7–86; 8:45 am]

BILLING CODE 6560-50-M

[31] The Agency also determined the upper limit of a 95 percent confidence interval for the benzo(a)pyrene data submitted by John Deere. This value, 29.5 ppm, was then used as an input to the Agency's Organic Leachate Model. The predicted leachate concentration, when subjected to the VHS model evaluation, also generated a compliance point concentration which exceeded the regulatory standard.

FEDERAL MARITIME COMMISSION

46 CFR Part 568

[Docket No. 86–26]

Self-Policing Requirements for Agreements Under the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revoke its self-policing regulations for steamship conferences in the domestic offshore trades. Congress' recent decision not to require netural body policing in our foreign commerce, coupled with an absence of problems requiring neutral body policing in the domestic offshore trades appears to have eliminated the need for these regulations.

DATE: Comments due on or before November 7, 1986.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: Section 15 of the Shipping Act, 1916 requires, in part, that "[t]he Commission shall disapprove any such agreement after notice and hearing, on a finding of inadequate policing of the obligations under it . . .", 46 U.S.C. App. 814. To

implement this mandate, the Commission promulgated regulations, 46 CFR Part 568, which require that all ratemaking agreements, except those between two parties, contain provisions describing the methods and standards used by independent policing authorities to investigate and adjudicate breaches of an agreement by any of the membership, and to assess appropriate penalties. These provisions, which include the mandatory filing of semiannual self-policing reports, were designed to provide the Commission with reliable information concerning the nature and performance of self-policing systems and curtail rebating and other malpractices by ocean carriers. They originally applied to conference agreements in foreign trades where rebating had historically been a problem and where the Commission's investigators often could not obtain access to records of foreign carriers.

The Shipping Act of 1984, 46 U.S.C. App. 801–820, deleted the requirement that agreements among ocean common carriers in U.S. foreign commerce be adequately policed, and replaced it with a requirement that conference agreements must be policed fully by an independent neutral body only if a member requests it. The passage of the 1984 Act has resulted in an anomalous situation in that the Commission's existing rules governing self-policing, which had been promulgated to apply primarily to foreign commerce under the 1916 Act, now apply solely to the domestic offshore trades.

It appears, however, that full compliance with the requirements of Part 568 could prove to be prohibitively expensive for carriers serving the domestic offshore traders, while serving no useful regulatory purpose.[1] Moreover, there is little historical evidence that what few agreements have existed in these trades have suffered from inadequate policing. Given these facts, it would appear that the adequacy of policing of a particular agreement could be better addressed on an *ad hoc* basis, rather than by the detailed and cumbersome procedures of the existing self-policing rules.

The Commission, therefore, invites comments on a proposal to revoke the self-policing regulations contained in Part 568.

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 46 CFR Part 568

Antitrust, Contracts, Maritime carriers, Reporting and recordkeeping requirements, Rates.

Therefore, pursuant to 5 U.S.C. 553 and sections 14, 15, 16, 17, 18(a), 21, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. App. 812, 814, 815, 816, 817(a), 820, 833(a) and 841(a), the Federal Maritime Commission proposes to remove Part 568 of Title 46, Code of Federal Regulations.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22775 Filed 10–7–86; 8:45 am]

BILLING CODE 6730–01–M

[1] Presently only two ratemaking agreements are subject to these regulations: Agreement No. 102–008454, the Guam Rate Agreement, and Agreement No. 102–010693, the Pacific Coast/American Samoa Rate Agreement.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 60617–6188]

Fishery Conservation and Management; Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). The rule (1) establishes a total allowable directed harvest of red drum from the fishery conservation zone (FCZ) of zero for 1987, (2) provides for a resource assessment program, (3) establishes a framework procedure for specifying commercial quotas in the FCZ on an annual basis, (4) establishes a catch limit for the incidental havest of red drum in non-directed fisheries and provides for prohibiting retention, landing, sale, barter or trade of any incidental harvest of red drum when the catch limit is reached, (5) prohibits the transfer or attempted transfer or red drum at sea, (6) requires permits for selected vessels with catches of red drum and (7) specifies reporting requirements for owners or operators of permitted vessels and dealers receiving incidentally-caught red drum. The intended effect of this rule is to prevent overfishing while achieving optimum yield on a continuing basis.

DATE: Comments on the proposed rule must be received or or before November 8, 1986.

ADDRESSES: Comments on the proposed rule and requests for copies of the initial regulatory impact review/initial regulatory flexibility analysis should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Comments on the collection of information requirement subject to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA. Persons interested in the Council's position on the FMP this rule would implement should contact Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609 (Telephone: 813–228–2815).

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary) has prepared the FMP under Section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was submitted to the Council on August 26, 1986. At its meeting on September 10, 1986, the Council provided extensive comments that will be addressed together with comments from the general public when final action is taken.

The Secretary promulgated an emergency rule (51 FR 23551, June 30, 1986) that limited the directed net harvest of red drum from the FCZ to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited nondirected fisheries to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed

on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 13, 1986). The Secretary extended the emergency regulations for a second 90-day period, in December 22, 1986, at which time this FMP would be implemented.

Red drum, *Sciaenops ocellatus*, commonly referred to as redfish, is one of the most important fishery resources in the Gulf of Mexico. Juvenile and subadult red drum inhabit estuaries and nearshore State waters while the larger, adult fish which comprise the spawning stock are generally found offshore in the FCZ. Recreational fishing occurs primarily in State waters. Red drum is the second most popular game fish species in the Gulf of Mexico.

Red drum landings in State waters averaged 10.0 million pounds per year from 1978 to 1985, ranging from a low of 6.8 million pounds in 1981 to a high of 13.4 million pounds in 1982. In 1985 landings were 9.3 million pounds. Recreational landings from 1979 to 1985 were three times the level of commercial landings from State waters.

Red drum landings from the FCZ averaged 0.98 million pounds from 1979 to 1985. These landings generally increased from a low of 0.14 million pounds in 1979 to 3.7 million pounds in 1985. From January 1 to June 25, 1986, 6.95 million pounds of red drum were harvested by purse seines alone. In 1984 and 1985, commercial landings from the FCZ were aproximately 10 times greater than recreational landings from the FCZ. Thus, a very noticeable shift from recreational to commercial fishing has occurred in the FCZ. Total landings (recreational and commercial) in State waters from 1979 to 1983 were 27 times the catch in the FCZ. In 1984 to 1985, the ratio dropped to 3.5 to 1, and if commercial fishing in the FCZ had not been curtailed by the emergency rule, landings, in the FCZ in 1986 would have been almost twice the landings in State waters.

The demand for "blackened redfish" increased commercial fishing on the spawning stock of red drum in the FCZ because the demand exceeded the capacity of the commercial fishery in State waters. Red drum school near the surface and are particularly susceptible to purse seine gear. Purse seines, when deployed under the direction of spotter aircraft, have proved extremely efficient with catches ranging upwards of 50,000 pounds per set; some of the larger vessels are capable of taking 150,000 pounds per set. At a hearing before the House of Representatives Subcommittee on Fisheries and Wildlife and the Environment in New Orleans, Louisiana, on June 2, 1986, testimony was presented that two vessels alone had harvested 3.4 million pounds from the FCZ during the first five months of 1986 and "would have harvested 20 million pounds if markets had existed." All five Gulf States have prohibited the use of purse seines for taking red drum in State waters and three States have prohibited their landing or sale. The remaining two States are expected to take similar action.

Although scientists have not determined the impacts resulting from the increased effort, the unregulated harvest of these long-lived brood fish is a major concern. A profile of the red drum fishery prepared by the Gulf of Mexico Fishery Management Council and Gulf States Marine Fisheries Commission indicated that growth overfishing was occurring in the estuarine areas of Texas and west central Florida.

The major problem regarding management of the red drum fishery is limited data on the size and condition of the resource. A major research program was initiated during the first 90-day emergency period and continued through a second 90-day period. Further, the major thrust during the first year of management is directed at determining stock abundance and the level of harvest that can be accommodated without damaging the biological integrity of the stock.

The fishery involves five species of schooling fishes in the Gulf of Mexico FCZ. Catches of one species often result in incidental catches of the others. The species include red drum (*Sciaenops ocellatus*), black drum (*Pogonias cromis*), crevalle jack (*Caranx hippos*), blue runner (*Caranx crysos*), and ladyfish (*Elops saurus*).

The management unit for which measures are proposed includes only the population of red drum occurring in the U.S. Gulf of Mexico. Only data collection and research are proposed for the other species in the fishery so as to expand the base of scientific information in the event conditions warrant the need to manage those species.

The principal objective is to manage the fishery as a unit throughout the U.S. Gulf of Mexico in a manner that will (1) ensure adequate recruitment from the adult spawning population in the FCZ to maintain catches in State waters near historic levels (10.0 million pounds), and (2) to encourage and support State efforts to ensure that enough juveniles survive fishing pressure in State waters to enter the FCZ spawning population, so that the spawning stock biomass can be maintained above critical levels. A biologically healthy population of red drum can provide commercial and recreational fishermen and consumers long-term benefits. To achieve this objective, it is recognized that the two levels of government must rely on one another to perpetuate the fishery at optimum harvest levels within their respective jurisdictions.

Optimum yield is defined as the following:

(1) All the recreationally-caught red drum harvested in State and Federal waters and landed consistent with State laws and regulations;

(2) All commercially-caught red drum harvested in State waters that are landed under State laws and regulations; and

(3) All commercially-harvested red drum in the FCZ that are caught in a directed or non-directed fishery under an annual allowable catch procedure.

Management measures provide for the following:

(1) A fishing year of January 1 to December 31;

(2) A procedure for determining the allowable commercial catch in the FCZ on an annual basis;

(3) A zero allowable catch for the directed fishery during the first year;

(4) A resource assessment program (RAP);

(5) An allowable incidental catch of red drum for non-directed fisheries limited to five percent of red drum by weight of the total catch (established at 300,000 pounds for the first year);

(6) A prohibition against retaining red drum when the non-directed fishery quota is taken (intent is to prevent expansion of the incidental harvest of the resource without adversely affecting traditionally fisheries);

(7) Permits for all vessels fishing with entanglement gear in the FCZ taking or landing red drum (fees to cover administrative costs associated with the permit programs may be required later);

(8) The maintenance of logbooks by owners or operators of permitted vessels and, in the future, by spotter aircraft pilots if selected to report by NMFS; and

(9) The prohibition of the transfer or attempted transfer of red drum at sea.

The procedure mentioned in (2) above requires that NMFS scientists assess the status of the stocks, assess and update (if appropriate) MSY, assess the range of acceptable biological catch (ABC) in the FCZ, and report such findings to the Regional Director on or before October 1.

Upon receipt of the scientific findings, the Regional Director will assess the specification of MSY and the economic, social, and biological impacts of various commercial harvest levels in the FCZ

within the ABC range and recommend (1) adjustment of the specification of MSY (if appropriate) and (2) the commercial harvest in the FCZ that most adequately accommodates the management objectives of this FMP.

In determining the annual commercial quota in the FCZ, the first priority must be given to the red drum incidental catch requirements of non-directed fisheries prior to assigning any directed fishery quota. If the ABC can only accommodate an incidental catch, a limit on the incidental harvest of red drum in non-directed fisheries will be proposed, with prohibition of retention of red drum should that limit be exceeded. If the ABC is zero, the retention of red drum must be prohibited. The commercial harvest, whether directed or non-directed, must not exceed ABC.

These determinations will be made by the Secretary and published in the **Federal Register** with 30 days' opportunity for public review and comment. The final amounts will be announced before the beginning of each fishing year.

The RAP mentioned in (4) above will be designed to assess the spawning stock biomass, calculate the amount of fish that will be required to maintain historic catches in State waters, and determine what level of commercial harvest can be safely taken in the FCZ. The program may authorize, under terms and conditions specified by the Regional Director, the participation of selected commercial fishing vessels which may be allowed to harvest and sell commercial quantities of red drum. At a minimum, the vessels so employed must accept and accommodate an observer on board, embark and disembark at locations specified, and fish in the place and time required for scientific purposes. The total harvest of red drum during 1987 under the RAP must not exceed one (1) million pounds.

Fish lawfully harvested under these regulations may be landed in any State of the United States. This action does not extend Federal management to red drum caught recreationally in the FCZ which will continue to be regulated by laws and regulations of the State in which the fish are landed.

Classification

Section 304(c)(2)(A)(iii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish proposed regulations for an FMP prepared by the Secretary. The Secretary has preliminarily determined that the FMP these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, including section 304(c)(1)(A), and other applicable law. The Secretary, in making a final determination, will take into account the data, views, and comments received during the comment period. The Secretary prepared a draft environmental impact statement for this FMP; a notice of availability was published on August 29, 1986, at 51 30885.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are designed to prevent overfishing of red drum in the FCZ. The Secretary incorporated a regulatory impact review (RIR) into the FMP. The major benefit is the restoration and maintenance of the red drum fishery in State waters at historic levels. The initial regulatory flexibility analysis (IRFA), which was prepared as a part of the RIR, concludes that this proposed rule, if adopted, would have significant effects on small business entities. A summary of the effects is included in the RIR. A copy of the FMP, containing the RIR and the IRFA, may be obtained from the Southeast Region, NMFS (see **ADDRESSES**).

This proposed rule is exempt from the procedures of Executive Order 12291 under Section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its submission for Council review. This proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments on this requirement may be sent to OMB (see **ADDRESSES**).

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

The U.S. Coast Guard has been provided with a copy of the proposed FMP and the proposed regulations for their review and comment.

NOAA initiated a Section 7 consultation in accordance with the Endangered Species Act, and a biological assessment was prepared, submitted, and reviewed. It was concluded that the proposed management measures would not affect any endangered or threatened species.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 653 is proposed to be revised to read as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 653.1 Purpose.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico prepared by the Secretary of Commerce.

§ 653.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Acceptable biological catch (ABC) means a range of harvest levels which can be taken from a stock while maintaining the stock at or near maximum sustainable yield and ensuring that recruitment overfishing does not occur. ABC may vary due to

fluctuating requirement, abundance, and intensity of fishing effort.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149; telephone 305–361–5761, or a designee.

Commercial quota means the maximum permissible level of annual commercial harvest of red drum in the FCZ specified after consideration of biological, social, and economic factors within the range of ABC.

Dealer means the person who first receives fish by way of purchase, trade, or barter from a fisherman.

Directed red drum fishery means any commercial fishing activity in which the amount of red drum landed exceeds five percent by weight of the total catch on board.

Fishery conservation zone (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific vessel, which involves

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft including aircraft which is used or equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Non-directed fishery means any commercial fishing activity in which the amount of red drum landed does not exceed five percent by weight of the total catch on board.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish or fish products for commercial use or consumption.

Red drum means *Sciaenops ocellatus*, also called redfish.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL telephone 813–893–3141, or a designee.

Resource assessment program means the resource assessment program as described at section 12.6.3 of the Secretarial Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico.

Secretary means the Secretary of Commerce or a designee.

Trip means a fishing trip, regardless of duration, which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

Vessel of the United States means—

(a) Any vessel documented under Chapter 121 of Title 46, United States Code; or

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than five tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 653.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico.

§ 653.4 Permits and fees.

(a) *Applicability.* Permits are required for all vessels fishing in the FCZ using entanglement gear (i.e. gill nets, trammel nets, and purse seines) and taking or landing red drum. An application for a permit must be applied for by the owner or operator of such vessel on forms provided by the Regional Director. The owners and operators of vessels issued such permits must comply with the terms and conditions stated thereon.

(b) *Fees.* There is no fee for a permit issued for a vessel in the non-directed fishery under this section.

(c) *Display.* A permit issued under this section must be carried aboard the vessel at all times. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(d) *Transfer.* A permit issued under this section is not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(e) *Sanctions.* Permits are subject to sanction and denial pursuant to the procedures found at Subpart D of 15 CFR Part 904.

§ 653.5 Reporting requirements.

(a) *Directed red drum fishery.* [Reserved]

(b) *Non-directed red drum fishery.* Onwers or operators of vessels permitted under § 653.4 must maintain logbooks containing the following information. Logbooks must be submitted to the Center Director monthly or more frequently if requested.

(1) Name and address of owner or operator;

(2) Name and official number of vessel and vessel's home port;

(3) Port and time of departure and arrival;

(4) Pounds of total catch by species;

(5) Pounds of red drum landed;

(6) Location of catch either by latitude and longitude, loran, or by grid zone (Appendix—Figure 1) as specified on logbook form;

(7) Gear used;

(8) Depth of water fished;

(9) Number of time of sets; and

(10) To whom the red drum catch was sold.

(c) *Dealers and processors.* Any person who receives red drum or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director;

(1) Dealer's or processor's name and address;

(2) County where red drum were landed;

(3) Total poundage of red drum received during that month, or other requested interval;

(4) Total poundage of red drum from adjoining State waters by each gear type; and

(5) Total poundage of red drum landed from the FCZ by each gear type.

(d) *Spotter aircraft pilots.* [Reserved]

(e) *Inspection.* Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make red drum or parts thereof available for inspection by the Center Director of his designee for the collection of additional information or for inspection by an authorized officer.

(f) *Observers.* [Reserved]

§ 653.6 Vessel identification. [Reserved]

§ 653.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fail to display the permit aboard a permitted vessel as required by § 653.4(c);

(2) Fail to comply with a term or condition stated on a permit issued under § 653.4;

(3) Falsify or fail to report information required to be submitted by § 653.4 and § 653.5;

(4) Fail to make fish available for inspection as required by § 653.5(d);

(5) Fail to comply immediately with enforcement and boarding specified in § 653.8;

(6) Transfer or attempt to transfer red drum in the FCZ as specified in § 653.22;

(7) Retain on board a vessel, land, sell, trade, or barter red drum taken in the FCZ after any closure as specified in § 653.23 has been invoked;

(8) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(9) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(10) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(9) of this section;

(11) Resist a lawful arrest for any act prohibited by this part;

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person had committed any act prohibited by this part;

(13) Transfer directly or indirectly, or attempt to so transfer, any U.S. harvested red drum to any foreign fishing vessel, while such vesel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S. harvested red drum;

(14) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part; or

(15) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken red drum or the final disposition of such red drum through the sale of the red drum.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 653.8 Enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method of communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications

by loudhailer or radiotelephone. Knowledge of these signals and appropriate action by a vessel operator is not required. However, knowledge of these signals by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .—) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.—. —.— — —.—. — .— —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... — —.— ...— —) means "you should stop or heave to: I am going to board you."

(4) "L" (.—..) means "you should stop your vessel instantly."

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, to 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 653.20 Seasons.

The fishing season for red drum is from 0001 hours (local time) January 1 to 2400 hours (local time) December 31.

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

§ 653.21 Quotas.

(a) The total allowable harvest or commercial quota of red drum for the directed red drum fishery in the FCZ is zero.

(b) The total allowable harvest of red drum for the non-directed red drum fishery in the FCZ is 300,000 pounds.

§ 653.22 Harvest limitations.

Transfer at sea. Fishing vessels may not transfer or attempt to transfer red drum in the FCZ from one fishing vessel to another.

§ 653.23 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, shall close the directed red drum fishery when the quota as specified in § 653.21(a) is reached or is projected to be reached.

(b) The Secretary, by publication of a notice in the **Federal Register**, shall close the non-directed red drum fishery when the quota for such fishery as specified in § 653.21(b) is reached or is projected to be reached.

(c) The directed red drum fishery is closed from the effective date of this rule through the 1987 fishing season, except as authorized under the resource assessment program.

§ 653.24 Stock assessment procedures.

(a) NMFS Southeast Fisheries Center will assess the condition of the red drum stock on an annual basis. The Center Director will provide the Regional Director with an assessment report by October 1 which includes a recalculation of maximum sustainable yield (MSY), if necessary, and a range of ABC for the FCZ for the upcoming fishing year along with a description of the biological consequences of levels of harvest within the ABC range.

(b) The Regional Director will consider economic, social, and biological impacts of levels of commercial harvest within the ABC range and will recommend commercial quotas in the FCZ for the next fishing year that are consistent with the objectives of the FMP. If changes are needed in MSY or the commercial quotas from the previous year NMFS will advise the Secretary of any recommendations.

(c) The Secretary will review NMFS' recommendations, supporting rationale, and other relevant information. After consulting with the Gulf of Mexico Fishery Management Council, if the Secretary concurs that NMFS' recommendations are consistent with the objectives of the FMP, the national standards, and other applicable law, he will publish a notice in the **Federal Register** of any preliminary changes prior to the appropriate fishing year. A 30-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish a notice in the **Federal Register** of any final changes for that fishing year.

(d) Appropriate preseason adjustments which may be implemented by the Secretary by notice in the **Federal Register** follow:

(1) Adjustment of the estimate of MSY for red drum.

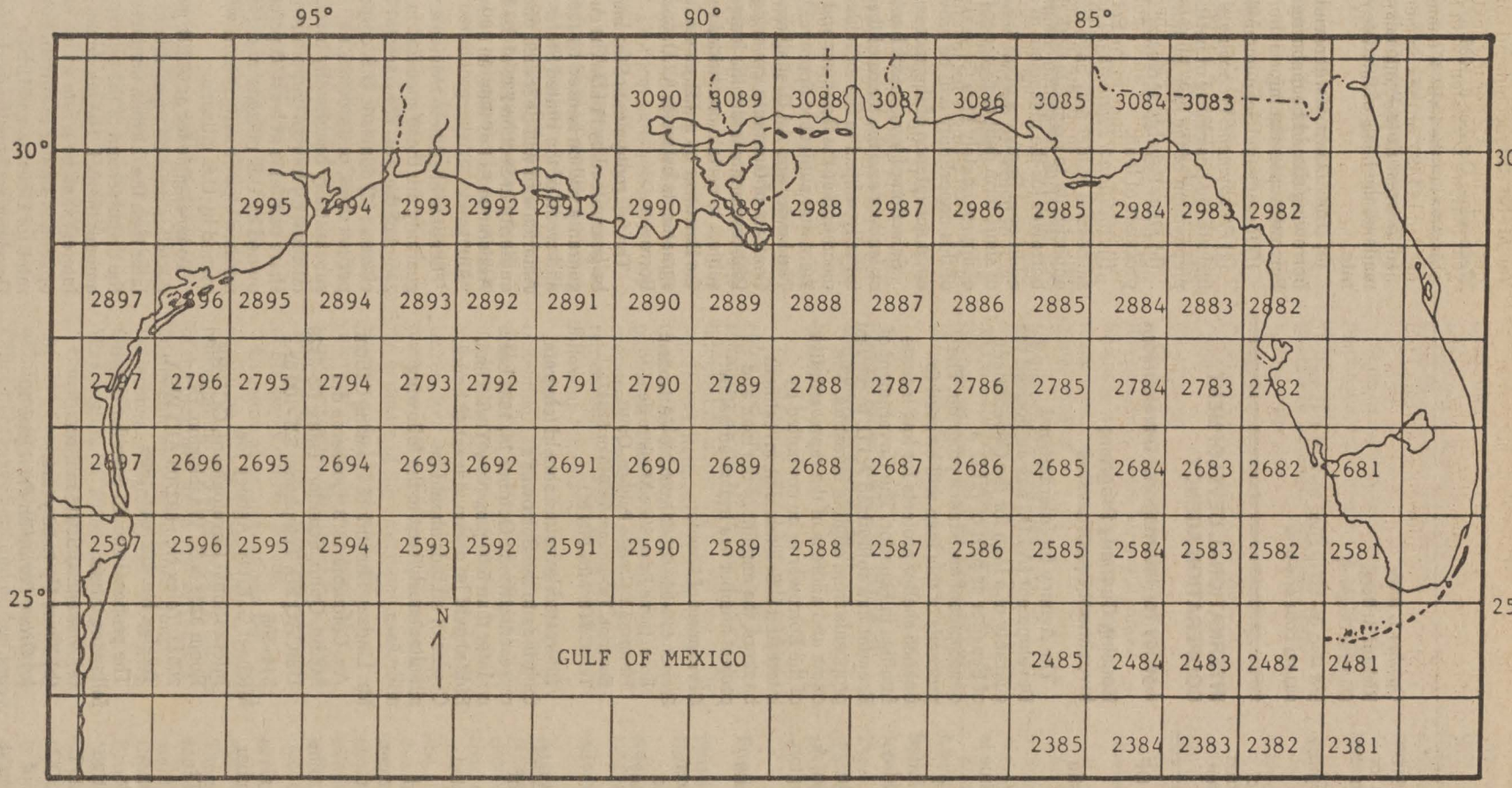
(2) Implementing or modifying commercial quotas, including a specification of an allowable harvest of red drum for the non-directed fishery as necessary to limit incidental harvest. A directed harvest will be allowed if the quota supports it, only after a reasonable allowance has been made to meet non-directed fishery requirements for red drum harvest.

§ 653.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

FIGURE 1 - STATISTICAL GRIDS FOR REPORTING THE HARVEST OF RED DRUM



[FR Doc. 86-22821 Filed 10-7-86; 8:45 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States, to be held at 9:30 a.m. on Friday, Oct. 17, 1986, in the Secretary's Conference Room, Room 5859, at the Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC.

The Committee will meet to discuss the following projects:

(a) A proposed recommendation on agency use of case management and related methods for improving agency adjudication, based on a project by Professor Richard B. Cappalli; and

(b) A discussion of Conference activities and projects involving federal agencies' use of alternative means of dispute resolution.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance of the meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

October 1, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–22749 Filed 10–7–86; 8:45 am]

BILLING CODE 6110–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunities

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Ecuador as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Ecuador. The Government of Ecuador has authorized A.I.D. to request proposals from eligible investors. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Ecuador

Project: 518–HR–006–$15,000,000—Attention: Econ. Jaime Zeas, Vice-Ministro de Finanzas Y Credito Publico, Quito, Ecuador, Telephone: 545845 or 523471, Telex: 2449 MIN FIN ED

Interested investors should telegram their bids to the Borrower's representative on October 14, 1986 but no later than 5:00 p.m. New York Time. Bids should be opene at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. Lindsay Elmendorf, Housing Officer, Av. Colombia 1573, Queseras del Medio, Quito, Ecuador, Telex: 02–2329 USICAQ ED, Telephone: 521–100 or 544–365

Michael G. Kitay, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647–1805

The proposal should consider the following terms:

(a) *Amount:* U.S. $15 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Repayment:* Semi-annually.

(g) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(h) *Fees:* Payable at closing from proceeds of loan.

(i) *Additional Financing:* The successful bidder may have the opportunity to negotiate with the borrower for the placement of an additional financing of up to $1 million of short-term debt of Ecuador for a term of approximately Five (5) years. Details of this opportunity will be provided upon acceptance of the successful bid.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be aligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The maximum rate of interest shall be a rate which in A.I.D.'s opinion is similar to current borrowing rates for Housing and Urban Development housing mortgage loans.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC 20523, Telephone: 202/647-9082

Any questions may be directed to Michael G. Kitay 202/647-8235 or Herbert T. McDevitt, 202/647-9506.

Dated: October 6, 1986.

Francis Conway,

Acting Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86-22966 Filed 10-7-86; 9:38 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 26, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection: (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404-W, Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Economic Research Service
Farm Real Estate Tax Survey
Annually

State or local governments; 3,265 responses; 1,250 hours; not applicable under 3504(h).

Ronald A. Jeremias, (202) 768-1888

- Forest Service

Application for Permit Non-Federal Commercial Use of Roads Restricted by Order.

FS-7700-40

State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 500 hours; not applicable under 3504(h).

J. Knaebel, (703) 235-9846

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-22801 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-01-M

Forms Under Review by Office of Management and Budget

October 3, 1986.

The Department of Agriculture has submitted to OMB for review fhe following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hour's needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the ageny contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

- National Agricultural Statistics Service
- Honey Survey
- Annually

Farms; 15,200 responses; 2,523 hours; not applicable under 3504(h).

- Lee Sandberg (202) 475-3237

Revision

- National Agricultural Statistics Service
- Supplemental Acreage Survey
- On occasion

Farms; 275,680 responses; 79,586 hours; not applicable under 3504(h).

- Lee Sandberg, (202) 475-3237

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-22800 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan and Deductions.

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is updating (1) the Thrifty Food Plan which determines the maximum amount of food stamps which participating households receive, (2) the amount of the standard deduction which is available to all households, and (3) the maximum amounts for the excess shelter and dependent care deductions available to certain households. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3385. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Mr. O'Connor.

SUPPLEMENTARY INFORMATION:

Publication

State agencies must implement this action on October 1, 1986, and need advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the Thrifty Food Plan and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment, or innovation.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action. This action is required by sections 3(o) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o) requires that the October 1, 1986 change in food stamp allotments be based upon the June 1986 cost of the Thrifty Food Plan for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale, and a requirement to round the final results down to the nearest dollar increments. Section 5(e) requires that the standard deduction and excess shelter and dependent care deductions be adjusted on October 1, 1986 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1986.

Benefits. This action increases maximum food stamp allotments and deductions based on the rising cost of living.

Costs. It is estimated that this action will increase the cost of the Food Stamp Program by approximately $201 million in Fiscal Year 1987.

Background

Thrifty Food Plan (TFP)

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. the plan suggests amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups.

The TFP also constitutes the basis for allotments for food stamp households. As such, the cost of the TFP is the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the TFP for their household size by 30 percent of the household's net income. As prescribed by the statute, these maximum benefit amounts are based on the TFP for a particular four-person household, and adjusted to take into account household size, economies of scale, and rounding.

The cost of the TFP is adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended, provides that the next adjustment will take place on October 1, 1986, based upon June 1986 TFP costs for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1986, these TFP values were $271.90 in the 48 States and DC; $363.50, in Alaska; $426.80 in Hawaii; $400.80 in Guam; and $349.60 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household in each area were divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and DC. In Alaska, where the TFP is based on Anchorage prices, the urban allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 1.0079 percent higher than the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP. (Thus, the allotment for Nenana will be at the previous level for rural Alaska.) The rural II allotment is 56.42 percent higher than the Anchorage TFP. For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska see 50 FR 13759–13761.

The following table shows the new allotments for the 48 States and DC, urban Alaska, rural I Alaska, Nenana, rural II Alaska, Hawaii, Guam, and the Virgin Islands.

THRIFTY FOOD PLAN AMOUNTS—OCTOBER 1986, AS ADJUSTED

Household size	48 States and District of Columbia	Urban Alaska[2]	Rural I Alaska[3]	Rural II Alaska[5]	Nenana[4]	Hawaii	Guam[6]	Virgin Islands[6]
1	$81	$111	$140	$170	$158	$128	$120	$104
2	149	204	256	312	290	234	220	192
3	214	293	367	447	415	336	315	275
4	271	372	467	568	527	426	400	349
5	322	442	554	675	626	506	475	415
6	387	530	665	810	752	608	571	498
7	428	586	735	895	831	672	631	550
8	489	670	840	1,023	949	768	721	629
Each additional member	+61	+84	+105	+128	+119	+96	+90	+79

[1] Adjusted to reflect the cost of food in June, adjustments for each household size economies of scale, and rounding.
[2] These levels were in effect in Urban Alaska on October 1, 1985. They are higher than 1.0079 times the Anchorage TFP.
[3] These levels are 28.52 percent times the Anchorage TFP. With the exception of Nenana, all rural 1 areas formerly received the allotment for urban Alaska.
[4] These levels were in effect in Nenana on October 1, 1985. They are higher than the allotment for rural I Alaska.
[5] These levels are 56.42 percent higher than the Anchorage TFP.
[6] Adjusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural II Alaska.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income. The standard deduction is available to all households. The excess shelter expense deduction is available to those with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly members. There is also a maximum amount for the dependent care deduction for households with elderly members.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households in the 48 States and DC shall be allowed a standard deduction of $85. The standard deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $145, $120, $170, and $75, respectively. The law also provides for periodic adjustments in the level of the standard deduction to take into account changes in the CPI–U published by the BLS, for items other than food and the homeowner's costs and maintenance and repair component of shelter costs. These deductions were last adjusted effective October 1, 1985 (see table). The adjustments are, by law, rounded to the nearest lower dollar. (See table).

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous deductions (effective 10–1–85)	New unrounded numbers (10–1–86)	Deductions effective 10/1/86
48 States and DC	$98	$99.29	$99
Alaska	168	169.37	169
Hawaii	139	140.18	140
Guam	197	198.57	198
Virgin Islands	86	87.60	87

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain excess shelter expenses. There is a maximum amount for the excess shelter deduction, unless the household has an elderly or disabled member, in which case there is no maximum. The maximum amount for the excess shelter deduction for households without an elderly or disabled member is adjusted annually. The annual adjustment in the level of the excess shelter deduction takes into account changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the CPI–U published by the BLS.

The amount specified in the Food Stamp Act for the maximum excess shelter deduction for the 48 States and DC is $147. The maximum excess shelter and dependent care deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $256, $210, $179, and $109, respectively. These amounts went into effect May 1, 1986 (see table). The next adjustments provided for in the law are to take effect October 1, 1986 to reflect changes for the twelve month period ending June 30, 1986 (also shown in the table). The adjustments are, by law, rounded to the nearest lower dollar.

SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBERS

	Previous deductions (effective 5/1/86)	New unrounded numbers (10/1/86)	Shelter deductions effective 10/1/86
48 States and DC	$147	$149.75	$149
Alaska	256	260.79	260
Hawaii	210	213.93	213
Guam	179	182.35	182
Virgin Islands	109	111.04	111

Adjustment of the Dependent Care Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain dependent care expenses. The maximum amount for the dependent care deduction for households without an elderly or disabled member is $160 a month. This amount is not adjusted to take into account changes in the cost of living so it will not be affected by this action. The maximum amount for the dependent care deduction for households with elderly or disabled members *is* adjusted annually because this amount is the same as the maximum excess shelter deduction for households without an elderly or disabled member.

Since the maximum amount for the excess shelter deduction is increasing, the maximum amount for the dependent care deduciton for households with an elderly or disabled member is also increasing. These new amounts are shown below:

Dependent Care Deductions For Households with Elderly or Disabled Members

[Effective 10/1/86]

48 States and DC	$149
Alaska	260
Hawaii	213
Guam	182
Virgin Islands	111

(91 Stat. 958 (7 U.S.C. 2011, et seq))

Dated: October 2, 1986.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 86–22799 Filed 10–7–86; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

Bundick Creek Watershed, LA

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bundick Creek Watershed, Allen, Beauregard and Vernon Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for installation of land treatment on 13,300 acres of critically

eroding cropland and 135 acres of critically eroding forestland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 29, 1986.

Horace J. Austin,

State Conservationist.

[FR Doc. 86-22742 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Fairfield Critical Area Treatment RC&D Measure, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fairfield Critical Area Treatment RC&D Measure, Camas County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Fairfield Critical Area Treatment RC&D Measure will provide treatment to four actively eroding sections of Soldier Creek near the town of Fairfield, Camas County, Idaho. Planned treatments to control the severe erosion and sedimentation problem on 4 sites includes approximately 750 feet of either rock riprap, woven wire revetment, plank and post revetment or vegetative armor on the eroding banks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.910—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 30, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 85-22815 Filed 10-7-85; 8:45 am]

BILLING CODE 3410-16-M

Mariah Creek Watershed, IN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mariah Creek Watershed, Knox and Sullivan Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Rd., Indianapolis, Indiana 46224, telephone 317/248-4350.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical assistance and financial assistance for land treatment.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 86-22743 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Tammany Creek Watershed, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tammany Creek Watershed, Nez Perce County, Idaho.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345

Boise, Idaho 83702, telephone (208) 334–1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparatation and review of an environmental impact statement are not needed for this project.

The project concerns land treatment measures to be applied on critically eroding cropland to control sheet, rill and gully erosion and the subsequent off-site sedimentation problems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 86–22817 Filed 10–7–86; 8:45 am]

BILLING CODE 3410–16–M

Twin Bridges Critical Area Treatment RC&D Measure, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Twin Bridges Critical Area Treatment RC&D Measure, Madison County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Twin Bridges Critical Area Treatment RC&D Measure will provide treatment to an actively eroding section of the North bank of the North Fork of the Snake River. Planned treatment to control the severe erosion and sedimentation problem includes 450 feet of rock armor on the eroding bank.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this pubication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.910—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 86–22816 Filed 10–7–86; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

Visiting Scholars Program, 1987–1988 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1987–88 school year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director [of the U.S. Arms Control and Disarmament Agency] in order to obtain the services of scholars from the faculities of recognized institutions of higher learning."

The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA initially implemented this program by competitively selecting six visiting scholars for the 1984–1985 school year to perform specific activities at ACDA for which their services had been identified as being needed. This process was repeated for the 1985–1986 and 1986–1987 school years and it is intended that the process will be used again this year with one-year assignments beginning at a mutually agreeable time during the period from July 1987 to mid September 1988 for the positions in ACDA's four bureaus described in the Appendix to this announcement. Note that the emphasis is on the expertise and service which the visiting scholars can provide rather than on general interest in arms control and the pursuit of the scholars' own research.

It is planned that the visiting scholars will be assigned by detail and compensated in accordance with the Intergovernmental Personnel Act. In addition to pay based on their regular salary rates, the visiting scholars will receive travel to and from the Washington, DC area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens or nationals of the United States and on the faculty of a recognized institution of higher learning. Prior to appointment they will be subject to full-field background security and loyalty investigation for a top secret security clearance including access to Restricted Data, as required by section 45 of the Arms Control and Disarmament Act.

Visiting scholars also will be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise which the applicant offers. The letter should be accompanied by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicant believes should be considered in the selection process. (If published materials are submitted, it is requested that they be provided in twelve copies, if possible.)

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Personnel Officer, Room 5722, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1987–88 school year is January 31, 1987, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected early spring 1987.

William J. Montgomery,

Administrative Director.

Appendix

A. Visiting Scholar Assignments to the Bureau of Multilateral Affairs of ACDA

1. Description of the Bureau of Multilateral Affairs

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral fora. The Conference on Disarmament, the Mutual and Balanced Force Reduction negotiations, the Conference on Security and Cooperation in Europe, and the United Nations General Assembly are the most important examples. MA provides both technical backstopping and diplomatic support to these substantive activities as well as to other negotiations which seek to reduce forces in Central Europe, to build confidence, to ban radiological weapons, to study negative security assurances, to limit military ependitures, to research nuclear weapons free zones, and to eliminate chemical and biological weapons.

2. Nature of Assignment (MA/ISP)

The International Security Program Division of the Bureau of Multilateral Affairs (MA/ISP) has responsibility for the Conference on Disarmament (CD) which started life in 1979 as a multilateral arms control negotiating forum in Geneva, although its ancestry dates back to the Ten Nation Disarmament Committee of the late 1950's. The DC now consists of 40 members, including most members of the Warsaw Pact and NATO as well as 21 non-aligned nations. Its annual session is divided into two parts, February-April and June-August. Active items on its agenda include chemical weapons (the U.S. submitted a draft convention to ban all chemical weapons in 1984), radiological weapons, outer space and nuclear testing.

The First Committee of the United Nations General Assembly is the other major forum for which MA/ISP has responsibility. The U.S. delegation coordinates the US position on disarmament resolutions with other Western and non-aligned delegations, as appropriate, and participates in the general debate. The General Assembly has no direct authority over the CD, but the CD transmits annual reports on its work to the United Nations, and the First Committee may pass resolutions recommending courses of action to the CD.

A visiting scholar assigned to MA/ISP would study the CD and General Assembly forums, in part through the daily responsibilities of interagency coordination and delegation work. The Visiting Scholar would study selected issues on the CD agenda to assess negotiating possibilities for the U.S.

3. Candidate Qualifications (MA/ISP)

The candidate should have a general familiarity with the United Nations system or other multilateral organizaitons. Also valuable would be previous experience with specific arms control issues, particularly nuclear testing and chemical weapons.

4. Nature of Assignment (MA/ESN)

The Conference on Security and Cooperation in Europe (CSCE) will be in session in Vienna during this period, considering, among other things, the outcome of the Conference on Confidence and Security Building Measures and Disarmament in Europe (CDE) which has recently concluded in stockholm. The future of the CDE will be decided by its parent CSCE conference, with a key issue being whether the CDE should move on to discuss disarmament measures.

Closely tied to the disarmament in Europe issue is the status of the Mutual and Balanced Force Reduction talks (MBFR), also taking place in Vienna, Austria. These negotiations have been ongoing since 1973 without notable progress. The occurrence of the two conferences, MBFR and CSCE, at the same time and place raises questions about how the question of conventional arms control in Europe might best be addressed.

A visiting scholar assigned to the European Securities Negotiations Division of the Bureau of Multilateral Affairs (MA/ENS) would analyze the interrelationships of these various negotiations for the purpose of assessing their future roles within the larger framework of U.S. national security policies. In addition, the scholar would study the problems and the possibilities of conventional arms control in Europe.

5. Candidate Qualifications (MA/ESN)

Specific useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

B. Visiting Scholar Assignments to the Bureau of Verification and Intelligence of ACDA

1. Description of the Bureau of Verification and Intelligence

The Bureau of Verification and Intelligence (VI) has responsibility for ACDA's work in verification, compliance, intelligence, operations analysis, and computer support. VI provides the support in these subject areas for the strategic and theater nuclear arms control negotiations; the Standing Consultative Commission; the Anti-Ballistic Missile, SALT I and SALT II Treaties, the Limited Test Ban Treaty and Threshold Test Ban Treaty and the agreements on chemical and biological weapons.

2. Nature of the Assignment

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; conducts operations analysis of relevant arms control issues and Soviet views thereof; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, drafting policy papers, and/or performing analyses both for use within ACDA and for coordination with other agencies. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to

exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: Verification of a treaty on chemical weapons, verification of limits on space-based weapons and weapons which can attack space-based military assets, compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing, or analysis of Soviet views on stability and their impact on verification.

3. Candidate Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, operations analyst, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: Knowledge of basic physics, chemistry, aerospace systems, operations research, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be a value, but is not a requirement.

C. Visiting Scholar Assignments to the Bureau of Strategic Programs of ACDA

1. Description of the Bureau of Strategic Programs

The Bureau of Strategic Programs (SP) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater nuclear offensive forces. This includes providing technical and policy guidance to the Director in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SP also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.-USSR arms control negotiations, and other defense related matters including ACDA participation in U.S. decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for the periodic Anti-Ballistic Missile (ABM) Treaty reviews. SP also has interagency responsibility for backstopping of the NST negotiations, the SCC, and ABM Treaty reviews. SP has two divisions: Strategic Affairs and Theater Affairs.

2. Nature of the Assignment

A visiting scholar assigned to SP would assist in policy formation in one or more of the areas cited above. Because of the high technical content in these areas, SP seeks a physical scientist with a broad theoretical or applied background.

The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency Groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of ACDA/SP.

3. Candidate Qualifications

Specific useful background for a candidate would include: Knowkedge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SP responsibility would be of value but is not a requirement.

D. Visiting Scholar Assignment to the Bureau of Nuclear and Weapons Control of ACDA

1. Description of the Bureau of Nuclear and Weapons Control

The Bureu of Nuclear and Weapons Control (NWC) has responsibility for nuclear non-proliferation issues, including the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlateloco. NWC also assesses the arms control implications of proposed arms transfers and technology transfers, and prepares Arms Control Impact Statements on U.S. programs and guides them through the interagency review process. In addition, NWC is responsible for ACDA's economic analysis work and coordinates publication of *World Military Expenditures and Arms Transfers.*

2. Nature of the Assignment

A visiting scholar assigned to NWC would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear non-proliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issue and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Departments of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

3. Candidate Qualifications

Desirable attributes for a candidate would include an understanding of the role of arms control in national security planning, familiarity with weapons charcteristics and capabilities, knowledge of political-military conditons in developing regions, a highly-developed analytical ability, and facility in written and oral communications. Because of the complex political-military issues involved, the individual should have a strong background in national security studies or international relations.

[FR Doc. 86-22813 Filed 10-7-86; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Sea World, Inc. (P20)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Sea World, Inc.
   b. Address: 1720 South Shores Road, San Diego, California 92109
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Pacific white-sided dolphins (Lagenorhynchus obliquidens)—8
4. Type of Take: Capture/maintain in captivity

5. Location of Activity: Waters off California
6. Period of Activity: 5 Years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 1, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22820 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limit for Certain Cotton and Man-Made Fiber Apparel Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive of December 20, 1985 (50 FR 52824) established a limit for certain cotton and man-made fiber textile products in Category 340/640 (men's and boys' shirts), produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of October 21 and November 12, 1985, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the limit for Category 340/640 is being increased by the application of swing, increasing it to 360,400 dozen for goods exported during the current agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 20, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 9, 1986, the directive of December 20, 1985 is hereby amended to increase the restraint limit established for cotton and man-made fiber textile products in Category 340/640 to 360,400 dozen,[1] pursuant to the bilateral agreement of October 9 and November 12, 1985 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22797 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-DR-M

Amending Export Visa Requirement for Certain Wool Textile Products Produced or Manufactured in the Republic of Korea

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea have agreed to further amend the existing export visa requirement to permit the use on visas of Category 459-W (woven woolen headwear in TSUSA numbers 702.7500 and 702.8000). This amendment will apply to wool headwear in Category 459, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1986 and until further notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

[1] The restraint limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] The bilateral agreement provides, among other things, that (1) within the group limit the specific limit may be exceeded by certain designated percentages in any agreement period; and (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit.

amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on October 9, 1986 and until further notice, the existing export visa requirement is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of wool textile products in Category 459, which have been visaed as Category 459–W [1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–22796 Filed 10–7–86; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 8, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1985 and January 27, 1986 notices were published in the **Federal Register** (50 FR 53182 and 51 FR 3392), which announced import restraint limits for man-made fiber and cotton textile products in Categories 645/646 (man-made fiber knit sweaters) and 359–V (cotton vests—only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422), among others, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The limit for Category 645/646 has been filled.

In accordance with the terms of the Bilateral, Cotton, Wool and Man-Made Fiber Textile Agreement of December 19, 1983, as amended, and at the request of the People's Republic of China, swing is being applied to the restraint limit previously established for man-made fiber textile products in Category 645/646, increasing it from 656,729 dozen to 689,565 dozen, for the current agreement year. The limit for Category 359–V is being reduced from 1,397,250 pounds to 1,134,558 pounds to account for the increase applied to Category 645/646. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 645/646 and 359–V.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 24, 1985 and January 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on October 8, 1986, the directives of December 24, 1985 and January 22, 1986 are hereby further amended to adjust the previously established limits for man-made fiber and cotton textile products in Categories 645/646 and 359–V,[1] as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[2]

Category	Adjusted 1986 limit [3]
645/646	689,565 dozen.
359–V	1,134,558 pounds.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–22781 Filed 10–7–86; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: October 26–30, 1986 (Detailed agenda follows).

ADDRESS: Williamsburg Hilton Hotel and National Conference Center, Williamsburg, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

[1] In Category 459, only TSUSA numbers 702.7500 and 702.8000.

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[2] The Agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sunday, 26 October 1986

11:00 a.m.–4:00 p.m. Registration
12:00 noon–1:00 p.m. Executive Committee Meeting
1:00 p.m.–2:30 p.m. Get Acquainted Luncheon (Current DACOWITS Members Only) MilRep and Liaison Officers Luncheon
2:30 p.m.–3:00 p.m. Chairman's Procedural Session for DACOWITS Members
3:00 p.m.–4:00 p.m. *Guest Speaker:* Honorable John Lehman, Secretary of the Navy
4:00 pm–6:00 p.m. Subcommittee Meetings (Evaluation and Disposition of Service Responses)
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
Briefings: Sexual Harassment Program (Subcommittee #3)
Defense Equal Opportunity Council (Subcommittee #3)
7:00 p.m.–8:30 p.m. No-Host Social Buffet

Monday, 27 October 1986

8:00 a.m.–8:30 a.m. OSD Official Coffee
8:30 a.m.–9:00 a.m. Official Opening
Presiding: Dr. Jacquelyn Davis, DACOWITS Chairman
Invocation: Chaplain (Cdr) George B. Hummer, USN, Chaplain, Coast Guard Reserve Training Center (RTC) Yorktown
Welcome: Maj Gen. Anthony Lukeman, USMC, Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy
Keynote Speaker: VAdm Donald C. Thompson, USCG, Commander, Altantic Area U.S. Coast Guard
9:15–10:00 a.m. Briefing: Army Medical Department Study
10:00 a.m.–11:45 a.m. Briefing: 1980 and 1981 Male and Female Service Academy Graduates
12:00 noon–1:30 p.m. OSD Luncheon (By Invitation Only)
Hosted by: Honorable Chapman B. Cox, Assistant Secretary of Defense for Force Management and Personnel
Invocation: Chaplain (Cdr) Geroge B. Hummer, USN
Guest Speaker: To be announced.
1:45 p.m.–2:15 p.m. *Briefing:* Update on Direct Combat Probability Coding
2:15 p.m.–3:15 p.m. *Briefing:* Congressional Concerns
2:30 p.m.–5:30 p.m. Subcommittee Meetings (Evaluation of Briefings and Sunday Resolutions)
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
7:00 p.m.–10:30 p.m. OSD Reception and Dinner (By Invitation Only)
Hosted by: Honorable Chapman B. Cox
Invocation: Chaplain (Lt) Martha M. Ewing, USN
Guest Speaker: To be announced

Tuesday, 28 October 1986

Field trip hosted by the U.S. Coast Guard to Reserve Training Center (RTC) Yorktown. (Limited to DACOWITS Members, Former Members, Official Military Representatives, DACOWITS Liaison Officers, and special guests.)

Wednesday, 29, October 1986

9:00 a.m.–9:30 a.m. Presentations by Members of the Public
9:30 a.m.–11:45 a.m. Subcommittee Meetings
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
12:00 noon–2:00 p.m. Installation Visit Luncheon
2:00 p.m.–5:00 p.m. Executive Committee Mark-up

Thursday, 30 October 1986

8:00 a.m.–11:00 a.m. General Business Session

Adjourn

11:00 a.m. 12:00 noon Executive Committee Meeting.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 10, 1986.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by member of the public will be permitted only from 9:00 a.m. to 9:30 a.m. on Wednesday, October 30, 1986, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by October 17, 1986.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, October 30, 1986.

Patricia H. Means,

OSD Federal Register, Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86–22771 Filed 10–7–86; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Exxon Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Exxon Corporation (Exxon) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Exxon's compliance with the Federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. To resolve those matters, Exxon will pay the DOE approximately $36.9 million, plus interest from the date the proposed Consent Order was executed by DOE. Persons claiming to have been harmed by Exxon's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA).

In addition to settling Exxon's possible liability for violations arising out of the company's sales of petroleum products, this Consent Order incorporates a resolution of Exxon's deficiency in the Injection Well Litigation Escrow Account (Escrow

Account) maintained by the court in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (Stripper Well).

After the entry of the Agreed Judgment and Order attached to the Consent Order as Exhibit A, Exxon will deposit approximately $106.1 million, plus interest from June 15, 1986, into the Escrow Account to be disposed of pursuant to the Stripper Well Final Settlement Agreement (final Settlement Agreement) which was approved by the Kansas district court on July 7, 1986.

Thus, Exxon will pay a total of $143 million plus interest. The decision to make the Exxon Consent Order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 25, 1986, ERA issued a notice announcing a proposed Consent Order beween DOE and Exxon which, with certain exceptions, would resolve matters relating to Exxon's compliance with Federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 51 FR 26734 (July 25, 1986). The proposed Consent Order, which requires Exxon to pay DOE approximately $36.9 million,[1] is for the settlement of Exxon's potential regulatory liability for $47.8 million in alleged overcharges including attributable interest. The July 25 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest.

The Consent Order also references the resolution of a dispute between DOE and Exxon regarding alleged deficiencies in Exxon's payments into the Escrow Account in the Stripper Well litigation. The issue of Exxon's deficiency in that litigation will be resolved by the submission of an Agreed Judgment and Order to the Kansas district court for approval within 30 days after finalization of the Consent Order.[2] The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on August 26, 1986.

II. Comments Received

ERA received five written comments. No requests to make oral presentations were received. The August 26, 1986 hearing was convened and one speaker, representing the Controller of the State of California, requested and was given the opportunity to make an oral presentation. All written and oral comments were considered in making the decision as to whether the proposed Consent Order should be made final.

The written comments received from the five commenters addressed a number of subject categories. The comment submitted by the Attorney General of the Commonwealth of Pennsylvania solely addressed the Office of Hearings and Appeals' disposition of the Exxon settlement funds. The comment received from the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia addressed the use of OHA Subpart V procedures to distribute the settlement monies, along with suggestions concerning the specific disposition of the Consent Order monies. The comment provided by Sun Exploration and Production Company noted an apparent typographical error in an exhibit attached to the Agreed Judgment. One comment fully supporting the proposed Consent Order was submitted by the following agricultural cooperatives: Agway Petroleum Corporation; Countrymark, Inc.; Delta Purchasing Federation; Farmers Petroleum Cooperative; Farmers Union Central Exchange; Farmland Industries, Inc.; FCX, Inc.; Gold Kist, Inc.; Growmark, Inc.; Indiana Farm Bureau Cooperative; Land O'Lakes, Inc.; Landmark, Inc.; MFA Oil Company; MFC Services; National Cooperative Refinery Association; Southern Farmers Association; Southern States Cooperative, Inc.; and Tennessee Farmers Cooperative. The final written comment, submitted by the Controller of the State of California, addressed the adequacy of the amount DOE received for settlement of the regulatory issues; the participation of interested parties in the settlement of Exxon's deficiency in the Escrow Account; and the effect of the Final Settlement Agreement on the wording of the Agreed Judgment and on OHA's distribution of monies attributable to crude oil violations.

III. Analysis of Comments

The July 25 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the July 25 notice provided detailed information regarding Exxon's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The Commonwealth of Pennsylvania's comments relating to OHA's distribution of the overcharge funds if the Exxon Consent Order is finalized were not germane to the basis or adequacy of the settlement. The distribution of the settlement funds attributable to refined product violations will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals, to be initiated shortly after publication of this notice. That portion of the $37 million settlement attributable to crude oil violations will be distributed by OHA in accordance with the OHA's July 28, 1986 Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 29689 (August 20, 1986), which was issued pursuant to the July 7, 1986 Final Settlement Agreement.[3] Comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the Exxon Consent Order claims proceeding.

The other group of states, along with expressing their views on the distribution of the funds attributable to refined products (which DOE will refer to OHA), objected to the provision in the Consent Order that requires the

[1] The $36.9 million, plus interest accrued from the date the proposed Consent Order was executed by DOE, will be disbursed to DOE within 30 days of publication of this notice.

[2] Exxon will deposit $106.1 million, plus interest accrued from June 15, 1986, in the Escrow Account within five business days of the entry of the Agreed Judgment.

[3] The July 28 OHA Order specifies that in all pending and future crude oil refund proceedings, 20 percent of crude oil overcharges monies will be set aside to satisfy claims for restitution and the remaining 80 percent will be disbursed equally to the state and federal governments for indirect restitution.

DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement fund. These states expressed the view that use of the Subpart V procedures was unnecessary and that the Consent Order itself should direct refunds to the States when it is impossible to identify the victims of overcharges. The ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Exxon, where ERA could not readily identify the injured parties or their relative amount of economic harm. This commenter may most appropriately present its claim for monies from the Consent Order fund in that forum.

The third commenter, Sun Exploration and Production Company, submitted a statement noting that one of its properties, the Northwest Dower Unit, was apparently omitted from Exhibit 3 of the Agreed Judgment. DOE had included the Northwest Dower Unit in Exhibit 3, although the property was improperly listed as the Northwest Dover Unit Because of a typographical error.

The fourth comment, submitted by a number of agricultural cooperatives, expressed full support of the proposed Consent Order.

The final commenter, the Controller of the State of California, was the only one which addressed the adequacy of the settlement amount. California questioned the appropriateness of considering Exxon's banks in calculating the overcharge liability resulting from the alleged violations and incorporated the comments the Controller had filed previously in the Mobil Oil Corporation Consent Order proceeding.

As DOE has previously explained in greater detail in, *inter alia*, the Mobil **Federal Register** notice, 49 FR 30354 (July 30, 1984), in response to the same statement made by the Controller of California, there is a difference between the DOE's method of assessing potential overcharge liability resulting from a firm's excessive cost or bank claims and the analysis sometimes used by OHA in Subpart V proceedings for determining the extent to which overcharges were absorbed by the first purchaser. California seems to assume that these two analytical processes are the same; they are not, and, in fact, must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed in order to assure that first purchasers who are not end-users do not benefit from settlements at the expense of other persons who were economically injured further along in the distribution chain. Accordingly, in the context of OHA's equitable refund proceeding, when a company claims that its banks provide conclusive evidence that it absorbed overcharges, it may be appropriate for OHA to examine the nature of the cost increases in the company's banks.[4] Such an examination may be necessary because if the mere existence of banks were proof that overcharges had been absorbed, and to what extent, each firm in the distribution chain that had banks could each assert that it had absorbed the same overcharges.

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge, liability in the context of the refiner pricing regulations. The principal liability question in an enforcement proceeding (or a settlement of such issue) is the degree to which the seller's sales prices exceeded its valid costs, not the distribution of the harm caused throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

California also questioned ERA's treatment of one administrative case, the "octane reduction" case,[5] as a bank adjustment rather than as a direct refund.[6] As ERA explained in the July 25 notice, ERA valued the octane reduction case consistent with the April 4, 1986 Order of the Federal Energy Regulatory Commission (FERC). While ERA moved for reconsideration of the FERC Order on May 9, 1986, that motion sought reconsideration only on the question of whether the reduction [7] of octane constituted a violation and not on the manner of determining the monetary liability.

While not disagreeing with the amounts, California also stated its belief that ERA should have provided additional information concerning the source of the number used to settle one judicial action, the "credit card" [8] and the methodology used to calculate interest on the total potentially recoverable amount for alleged regulatory violations.

ERA calculated the amount of the recovery adjustment in the credit card case using the methodology required by the April 26, 1979 Remedial Order (RO) issued to Exxon.[9] The RO required the company to reduce its maximum permissible selling prices of gasoline and other covered products by an amount reflecting the costs per gallon which were attributable to Exxon's credit card arrangements in August 1974, the last full month in which Exxon maintained the use of the bank cards.

California also questioned the interest rates ERA used, and whether interest was separately calculated for each alleged violation from the date of occurrence of each violation or whether one interest figure beginning on one date was used to calculate the entire amount. In calculating interest on the entire potentially recoverable amount of overcharges, ERA assessed interest on each violation from the date the violation first occurred at the interest rates set forth in DOE's Interest Rates on Violations, Notice of Policy, published in 46 FR 21412 (April 10, 1981).

With respect to the settlement of Exxon's deficiency in the Stripper Well Escrow Account, the Controller of California commented that DOE should obtain the agreement of the states and other interested persons who were parties to the underlying Stripper Well litigation, either before submitting the Agreed Judgment and Order to the court or by submission of the Agreed Judgment to the court in the form of a motion so that it would be subject to responses and the court's ruling. ERA does not believe it appropriate or necessary to secure the states' agreement to an Agreed Judgment which resolves claims initiated pursuant to section 209 of the Economic Stabilization Act, and the Final Settlement Agreement contains no provision for state agreement to such a resolution.[10] Furthermore, submission of

[4] In a number of such cases, OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity, and accordingly concluded that the firm's overcharge absorption could only be attributed in the proportion of overcharges incurred to all cost increases incurred.

[5] OHA Case No. BRO-1453; FERC Case No. RO85-6-000.

[6] The Controller of California's oral presentation consisted solely of a brief summary of its written position on this matter.

[7] The FERC procedural regulations do not provide for the filing of a motion for reconsideration and FERC has never granted such a motion filed by ERA. Under the FERC rules, FERC's failure to grant a motion within 30 days operates as a denial, and FERC did not respond to ERA's motion within that time.

[8] *Exxon Corp. v. DOE*, C.A. No. 3-78-1302-G (N.D. Texas).

[9] The RO, issued by the Federal Energy Administration's Region 6, was upheld on appeal by OHA 2 DOE ¶ 80,150 (Oct. 2, 1978), which specified the precise adjustment to be made.

[10] Indeed, the Final Settlement Agreement provides that "it remains solely in the DOE's discretion to determine whether an enforcement proceeding should be initiated, settled, pursued on particular terms or terminated." *Id.* Section IV.A. at 13.

the Agreed Judgment to the district court for the appproval and agreement of the court concerning form and substance allows the court to consider any information it deems necessary before entry of the Agreed Judgment.[11] Therefore, ERA believes that the Agreed Judgment in its present form satisfactorily addresses the concerns of all interested persons.[12]

Finally, the Controller asserted that in the final **Federal Register** notice, ERA should explain that the funds attributable to the crude oil violations other than those at issue in the Stripper Well litigation are to be distributed by OHA subject to the terms of the Final Settlement Agreement. ERA has addressed that matter earlier in this notice in response to a comment filed by the Commonwealth of Pennsylvania.

In the July 25 **Federal Register** notice, ERA sought to provide the maximum amount of information possible, and to address Exxon's actual financial liability resolved by the proposed Consent Order. A review of scope of the disclosure in the July 25 notice and the fact that only one commenter in any way addressed the adequacy of the settlement amount has resulted in ERA's belief that the July 25 notice provided the public with sufficient information to assess its adequacy. Therefore, the ERA will not repeat its explanation concerning the basis for the settlement, but will refer any member of the public who is interested in that matter to the July 25 **Federal Register** notice, which contains a thorough discussion.

The review and analysis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Exxon. Accordingly, ERA concludes that the Consent Order is the public interest and should be made final.

[11] Only one commenter other than the State California addressed the resolution of Exxon's deficiency in the Stripper Well Escrow Account and that commenter praised the result. California itself did not object to any of the substantive provisions of the Agreed Judgment and stated in its comment that it did not anticipate any of the states would seek changes in the Agreed Judgment.

[12] California also suggests that the language in paragraph 7 of the Agreed Judgment, which states that the Agreed Judgment does not resolve the issue of distribution of the monies deposited in the Escrow Account, should now reflect the fact that the Final Settlement Agreement governs disposition of the escrowed funds. ERA believes that no change to the Agreed Judgment is necessary since that document is clearly governed by the Final Settlement Agreement and presents no legal inconsistencies with the Final Settlement Agreement.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Exxon and DOE executed by DOE on June 16, 1986 is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on October 2, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-22769 Filed 10-7-86; 8:45 am]

BILLING CODE 6450-01-M

[50653-2490-01, 02-82 and 50653-2500-01, 02-82]

Acceptance of Petition Withdrawing Certification for Ravenswood 30N and 30S and Arthur Kill 20 and 30 Powerplants; Consolidated Edison Co. of New York

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On July 31, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison" or "the Company") notified the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) of the Company's withdrawal of its certification of coal capability for its Ravenswood 30 North and South and Arthur Kill 20 and 30 powerplants. Pursuant to section 301(a) of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) as amended by section 1021 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), the Company filed certifications with ERA on December 29, 1981, which addressed the technical capability and financial feasibility of these powerplants to use an alternate fuel, coal, as a primary energy source. In accordance with procedural requirements of FUA and 10 CFR 501.52(b)(2) ERA published its Notice of Acceptance of Certification and Issuance of Proposed Prohibition Orders to Consolidated Edison Company of New York, Inc. for Arthur Kill and Ravenswood in the **Federal Register** on February 4, 1982 (47 FR 5290-5292). Because of significant changes in the circumstances of these units since the submission and acceptance of said certifications, the Company has amended their certification pursuant to 10 CFR 501.52(d) and 504.5(c). The amendments make clear that it is no longer financially feasible to convert these units to coal. Therefore, pursuant to 10 CFR 501.52(b)(5), ERA hereby terminates the prohibition order proceedings for the Ravenswood and Arthur Kill powerplants. In accordance with the requirements of 10 CFR 501.52(b)(5) concerning such action, ERA is issuing this notice. A review of the withdrawal notification is provided in the **SUPPLEMENTARY INFORMATION** section below.

The public file containing a copy of this notice and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office fo Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, Washington, DC 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Con Edison's certifications were based on its belief that both New York State and New York City would approve the Company's request for permission to convert Ravenswood 30 and Arthur Kill 20 and 30 powerplants to coal burning without requiring the use of flue gas desulfurization (FGD) equipment. This expectation was founded on the Company's belief that the use of low sulfur coal at these powerplants without FGD systems would not cause violations of air quality standards, would not interfere with regional growth, would not contribute significantly to acid deposition and would result in very substantial fuel cost savings for Con Edison's customers. The issuance of prohibition orders would have negated the possibility of new source performance standards (NSPS) being applied to the Company's coal conversions.

In April 1982, ERA issued draft environmental impact statements pursuant to the National Environmental Policy Act of 1969 (NEPA) reviewing the environmental impact of coal burning at the powerplants. Legislative hearings to consider the adequacy of ERA's draft impact statements were conducted jointly with the New York State Department of Environmental Conservation (DEC) in New York City on May 18, 25 and 27, 1982.

In order to obtain coal burning approval from New York State, the

Company filed a petition with DEC on February 2, 1981, invoking its authority to permit the use of 1.0 percent sulfur coal at the Ravenswood and Arthur Kill powerplants without FGD systems. DEC issued a decision which concluded that "The Company should be granted authority to burn coal at both its Arthur Kill and Ravenswood plants in each instance upon the express condition that the Company install and use FGD equipment." DEC indicated that in making its decision it was governed by the State Environmental Quality Review Act which requires an agency to balance the benefits of a proposed project against its unavoidable environmental risks and to approve the alternative which, to the extent practicable, minimizes or avoids adverse environmental effects. DEC found that the use of FGD equipment "minimizes or avoids significant adverse environmental impacts to the maximum extent practicable."

The Company has stated that DEC's requirements, that FGD systems be installed, has precluded Con Edison from implementing its coal conversion program based on the economics envisioned in the Company's voluntary certification petition. In October 1985, the Company advised the New York State Public Service Commission (PSD) of its decision not to pursue the Ravenswood 30N and 30S and Arthur Kill 20 and 30 coal conversions. In conjunction with this decision, the Company has withdrawn its section 301 certifications of coal capability for the Ravenswood 30N and 30S and Arthur Kill 20 and 30 powerplants.

Pursuant to 10 CFR 501.52(b)(5), because of the withdrawal of Con Edison's certification, ERA hereby terminates the prohibition order proceedings for the Ravenswood and Arthur Kill powerplants.

Issued in Washington, DC, September 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22795 Filed 10-7-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Forms EIA-820, "Annual Refinery Report" and EIA-810, "Monthly Refinery Report"

Correction

In FR Doc. 86-22352 beginning on page 35265 in the issue of Thursday, October 2, 1986, make the following correction: On page 35266, in the second column, in the second line, "food imports" should read "feed inputs".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-723-000 et al.]

Natural Gas Certificate Filings; Mountain Fuel Resources, Inc., et al.

October 2, 1986.

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources, Inc.

[Docket No. CP86-723-000]

Take notice that on September 16, 1986, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-723-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to abandon a 4-inch meter run and to replace it with a 2-inch meter set and a 6-inch meter set under the certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MFR proposes to replace one 4-inch orifice meter run at its existing Exxon Company, U.S.A. (Exxon), Dry Piney delivery point to Mountain Fuel Supply Company (MFS) with one 2-inch positive displacement meter set and one 6-inch turbin meter set. It is stated that the installation of the new meter sets would allow MFR to more accurately measure gas delivered to MFS to serve the varying requirements of Exxon at its Dry Piney gas dehydration plant (Dry Piney plant).

MFR estimates the cost of new facilities to be $72,000, which would be reimbursed by MFS. It is explained that the existing 4-inch meter run can measure the volumes required by Exxon to fuel normal plant operations; however, MFR states, the existing metering facility cannot measure the low-flow volumes needed by Exxon for pilot gas and space heating nor the emergency flare gas volumes that Exxon requires during unanticipated and sporadic 4 to 5-hour periods when emergency shutdown conditions warrant immediate flaring of unprocessed raw gas laden with carbon dioxide and hydrogen sulfide. MRF further explains that the proposed 2-inch positive displacement meter set would typically measure the low-flow volumes to be used by Exxon for pilot gas and space heating during those occasions when the Dry Piney plant is shut down, while the proposed 6-inch meter set would measure volumes required by Exxon for normal plant operations and emergency flaring.

MFR states that natural gas would be delivered to MFS at MFR's Exxon Dry Piney delivery point pursuant to MFR's sale-for-resale and transportation Rate Schedules CD-1 and X-33 of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 3, respectively, and transportation Rate Schedule T-2 of its FERC Gas Tariff, Original Volume No. 1-A, under which MFR would provide new transportation service under Section 311 of the Natural Gas Policy Act of 1978 (NGPA).

MFR explains that the low-flow volumes required by Exxon for pilot gas and space heating, all volumes needed by Exxon to fuel normal plant operations, and a portion of Exxon's flare gas requirement would be delivered to MFS by MFR, for redelivery to Exxon, in accordance with MFR's Rate Schedules CD-1 and X-33. The majority of Exxon's flare gas requirement, it is further explained, would be transported by MFR on behalf of MFS pursuant to NGPA section 311 and MFR's Rate Schedule T-2. MFR asserts that most of the flare gas volumes would be purchased by Exxon from Northwest Pipeline Corporation (Northwest) and transported by MFR for Exxon on behalf of MFS from a pipeline interconnection between MFR's jurisdiction lateral No. 17 and Northwest's 30-inch Big Piney lateral in Sublette County, Wyoming, to MFR's Exxon Dry Piney delivery point for redelivery to MFS.

Comment date: November 17, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP86-713-000]

Take notice that on September 5, 1986, Northern Natural Gas Company, Division of Enron Corp., (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-713-000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas by Applicant for the account of Shell Gas Trading Company (SGTC). Applicant states that it shall provide firm transportation service for SGTC's account of up to 60,000 MMBtu equivalent of natural gas per day attributable to SGTC's purchases from Shell Offshore Inc., in Matagorda Island

area Block 681, offshore Texas (MAT 681).

Applicant states that SGTC will cause the MAT 681 production to be delivered to Applicant at the Matagorda Offshore Pipeline System's (MOPS) compression platform located in MAT 686. Applicant will transport and redeliver thermally equivalent volumes to Houston Pipe line Company and as Channel Industries for SGT's account near Tivoli, Texas, at the interconnection of MOPS and Channel Industries' A–S pipleine for ultimate redelivery to Shell California Production, Inc. (SCPI) in California for use in SCPI's enhanced oil recovery operations. However, SGTC may desire to sell certain quantities of its MAT 681 supplies to "spot market" purchasers when economic conditions are appropriate.

Applicant also requests pregranted certificate authority to increase SGTC's firm service by 20,000 MMBtu per day during the first 120 days of service and pregranted abandonment authorization to decrease SGTC's firm service by 20,000 MMBtu per day during that same time frame, subject to notification to Applicant by SGTC. Additionally, Applicant requests authority to provide, on an interruptible basis, overrun transportation service for the natural gas volumes SGTC delivers to Northern in excess of the daily contract quantity.

For the services proposed herein Applicant proposes to charge SGTC the effective maximum MOP rate of 7.4 cents per million Btu for both the firm and interruptible transportation service. Such rate is outlined in Applicant's Stipulation and Agreement of Settlement in Docket No. RP85–206–000.

Comment date: October 23, 1986, in accordance with Standard paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company, Trunkline Gas Company

[Docket No. CP82–43–012]

Take notice that on September 16, 1986, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Petitioners) , P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP82–43–012 pursuant to Section 7 of the Natural Gas Act a petition to amend their certification of public convenience and necessity issued by the order of February 25, 1982, in Docket No. CP82–43–000, as amended, so as to authorize partial abandonment of transportation service by reducing the amount of natural gas transported by Petitioners on behalf of United Gas Pipe Line Company (United), transportation of gas owned by third parties and pregranted abandonment of service to United on November 1, 1988, all as more fully set forth in the petition to amend which is on file with Commission and open for public inspection.

It is stated that Petitioners request Commission authorization to implement an amendment dated September 12, 1986, to their transportation agreement dated October 13, 1981, between Petitioners and United authorizing reduction and partial abandonment of service provided by Petitioners to United, transportation of gas owned by third parties gas within United's revised transportation quantity, and also pregranted abandonment of service under the agreement on November 1, 1988, along with cancellation of Panhandle's Rate Schedule T–48 and Trunkline's Rate Schedule T–72 at that time.

It is further stated that pursuant to the Amendment to their transportation agreement, Petitioners propose to reduce the quantity of gas transported on behalf of United by fifty percent (50%), fom 100,000 Mcf of gas per day to 50,000 Mcf of gas per day, and to reduce the total monthly charge United pays Petitioners from $823,000 to $411,500 to be effective as of November 1, 1986, and until November 1, 1988, when the agreement will terminate. It is also alleged that Panhandle provides service to United pursuant to Rate Schedule T–48 of its FERC Gas Tariff, Original Volume No. 2, and Trunkline provides service to United pursuant to Rate Schedule T–72 of its FERC Gas Tariff, Original Volume No. 2.

Comment date: October 23, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86–747–000]

Take notice that on September 30, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86–747–000 an application pursuant to section 7 of the Natural Gas Act, as amended, for a limited-term certificate of public convenience and necessity, with pregranted abandonment authority, authorizing Applicant to transport natural gas to its distribution customer Union Gas Company (Union) for the account of The New Jersey Zinc Company, Inc. (New Jersey Zinc), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant is requesting authorization to transport to Union on behalf of New Jersey Zinc, quantities of natural gas up to the dt equivalent of 4,000 Mcf of natural gas per day pursuant to a transportation agreement among Transco, New Jersey Zinc, and Union.

It is explained that New Jersey Zinc would purchase the gas to be transported hereunder from Transco Energy Marketing Company (TEMCO) and/or other sources which can deliver gas to Applicant. Applicant states that it would receive the gas at the existing points of interconnection between Applicant and the TEMCO producer-sellers and/or other suppliers' delivery points, and would deliver equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at the existing point of delivery to Union at Palmerton near Wind Gap, Monroe County, Pennsylvania, and that Union would in turn deliver such gas to New Jersey Zinc's plant in Palmerton, Pennsylvania (Palmerton Plant).

Applicant states that its Compressor Station No. 65, located on its main line at the Louisiana-Mississippi border, represents the terminus of its gas production area and the beginning of the market area. Transco indicates that the proposed transportation from Station No. 65, north to Union would be on a firm basis and that transportation south of Station No. 65, in the production area, would be on an interruptible basis.

Transco states that for the firm transportation downstream of Station No. 65, Applicant proposes to charge New Jersey Zinc the rates and charges set forth in Rate Schedule FT which is currently pending Commission approval pursuant to the stipulation and agreement filed May 13, 1986, in Docket Nos. TA85–1–29–000, *et al.* It is indicated that all transportation upstream of Station No. 65, which is interruptible, would be based upon the rates and charges contained in Applicant's Rate Schedule IT which is also contained in the aforementioned stipulation and agreement. Applicant states that it would retain initially 6.6 percent of the transportation quantities for compressor fuel and line loss make-up.

Applicant also requests flexible authority to add or delete sources of gas and/or receipt points acceptable to Applicant on behalf of New Jersey Zinc. With respect to such flexible authority, Apllicant states that it would file by May 1 of each year appropriate tariff sheet revisions with the Commission reflecting any additions or deletions of any gas suppliers and/or receipt points during the preceding 12-month period. Applicant submits that any changes made pursuant to such flexible authority would be on behalf of the same end

user, New Jersey Zinc, for use at the same end-use location and would remain within the daily maximum transportation volume proposed in the subject application.

Transco also indicates that as a safety measure, New Jersey Zinc would deliver or cause to be delivered to Transco downstream of Station 65, at one of five specified points of interconnection in Mississippi for transportation north on a firm basis, a quantity equal to the dt equivalent of 1,000 Mcf of natural gas per day for plant protection and maintenance requirements at the Palmerton Plant.

It is averred that the transportation agreement is for a limited term expiring on November 15, 1990, and Applicant requests pregranted authority to abandon the transportation service on such date. However, if during the term New Jersey Zinc should discontinue any of the processes at the Palmerton Plant and its gas requirements be reduced accordingly, Applicant requests pregranted authority to then abandon the service to the extent of such reduction. And, if during the term New Jersey Zinc's Palmerton Plant should cease operation, Applicant requests pregranted authority to abandon the service as of the date of such cessation of operation.

Transco states that no additional facilities are required to render the proposed firm transportation service. Transco indicates that pending in Applicant's Docket No. CP86-406-000, is an application under section 7(b) of the Natural Gas Act for an order permitting and approving partial abandonment of service to Union, which application would, when granted, reduce Union's firm Rate Schedule CD-3 allocation from 19,560 dt equivalent of natural gas per day to 10,350 dt equivalent of natural gas per day, effective January 1, 1986. It is indicated that such reduction, requested by Union, furnishes more than adequate capacity to accommodate the maximum 4,000 dt equivalent of natural gas per day transportation service proposed herein.

Applicant further states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations.

Comment date: October 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Trunkline Gas Company, United Gas Pipe Line Company

[Docket No. CP86-725-000]

Take notice that on September 16, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, jointly referred to as Applicants, filed in Docket No. CP86-725-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to exchange up to 150,000 Mcf of natural gas per day on an interruptible basis pursuant to the terms of a September 12, 1986, Gas Exchange Agreement (Exchange Agreement). It is stated that Trunkline would deliver natural gas to United for exchange at an existing point of interconnection between the facilities of United and Delhi Gas Pipeline Company in Polk County, Texas, and the existing point of interconnection between United and Trunkline near Centerville, St. Mary Parish, Louisiana. The maximum volume delivered to United in Polk County would be limited to 40,000 Mcf of gas per day, it is explained. It is further explained that United would deliver natural gas to Trunkline at a point near Olla, LaSalle Parish, Louisiana.

Applicants state that no new or additional facilities are required to implement the exchange. Applicants further state that since the exchange arrangement would be mutually beneficial there would be no charges between Applicants. It is further stated the Exchange Agreement provides for a primary term of three years and continuation for successive one year periods until cancelled by either party.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP86-730-000]

Take notice that on September 18, 1986, United Gas Pipe line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-730-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of up to 7,000 Mcf of natural gas per day for Nicor Exploration (Nicor), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a gas transportation agreement between the Applicant and Nicor dated June 1, 1986, Applicant proposes to transport up to 7,000 Mcf per day for Nicor from points of delivery in Oklahoma and offshore Louisiana.

Applicant would transport up to 5,000 Mcf per day delivered to it for the account of Nicor by Reliance Pipeline Company (Reliance), an affiliate of Nicor's in Caddo County, Oklahoma. It is stated that Reliance would deliver the subject gas to Natural Gas Pipeline Company of America (Natural) who would redeliver the volumes to the Applicant at the existing interconnect between Applicant and Natural at or near Earth, Vermilian Parish, Louisiana for subsequent redelivery by Applicant to Mississippi River Transmission Corporation (MRT) at Perryville, Ouachita Parish, Louisiana for Nicor's account. Applicant avers that it would utilize its reserved capacity (authorized in Docket No. CP82-50-000) in the Oklahoma system of Natural to transport gas for Nicor.

Applicant further states that it would transport up to 2,000 Mcf per day of Nicor's offshore production to MRI, receiving such volumes at a point on the pipeline system of Stingray Pipeline Company (Stingray) located in West Cameron block 538, offshore Louisiana. Applicant would transport such volumes, utilizing its reserved capacity in Stingray pursuant to Commission authorization in Docket No. CP81-346-000 and redeliver the volumes into the system of Natural onshore at Holly Beach, Cameron Parish, Louisiana.

Applicant would utilize its reserved capacity in Natural's system pursuant to Commission authorization in Docket No. CP73-219, receiving such volumes at Earth, Louisiana, for subsequent redelivery in its own system to MRT at Perryville, Louisiana for Nicro's account.

Applicant would charge Nicro its applicable Type III mileage based transportation rate of 40.34 cents contained in its IT rate schedule. The rate excludes the GRI funding unit, and includes an allowance for fuel and company-used gas.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP86-727-000]

Take notice that on September 17, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP86-727-000,

a request pursuant to (Sections 157.205 and 157.211) for authorization to construct and operate a sales tap to provide gas to Entex, Inc. (Entex), for resale to the residence of Richard Freed in Dallas County, Texas, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the proposed 1-inch sales tap would supply Entex, a local distributor, with an estimated average 1 Mcf of natural gas per day for residential use under United's Rate Schedule DG–N.

The proposed sales tap would be located on United's 18-inch Latex-Ft. Worth line located in Dallas County, it is asserted. Entex would remburse United for all costs resulting from the installation of the tap, it is explained.

United also states that the new sales tap for Entex would not result in an increase in Entex's aggregate base requirements or contractual daily quantity of gas, and that the proposed service would not diminish any service to United's existing customers.

Comment date: November 17, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Western Transmission Corporation

[Docket No. CP86–717–000]

Take notice that on September 11, 1986, Western Transmission Corporation (Applicant), First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP86–717–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85–1–000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. Applicant proposes to charge a maximum rate of 12.6 cents per Mcf and a minimum rate of 1.0 cents per Mcf of gas tendered to and received by Applicant for transportation under its Rate Schedule OAT–1 for firm service and OAT–2 for interruptible service in compliance with the provisions of § 284.7 of the Commission's Regulations.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Williston Basin Interstate Pipeline Company

[Docket No. CP86–719–000]

Take notice that on September 12, 1986, Williston Basin Interstate Pipeline Company (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86–719–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas compression facilities used and associated with the delivery of natural gas from its Madden Compressor Station located in Fremont County, Wyoming, to Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston states that it has filed in Docket No. CP86–430–000 for partial abandonment of its service to CIG under Rate Schedule X–5, specifically, abandonment of any direct sales to CIG. Williston avers that it was authorized to install and operate a leased compressor unit (Madden Compressor Station) in order to deliver an additional 12,000 Mcf of per day of sales of natural gas to CIG under Rate Schedule X–5 (18 FERC ¶ 61,146). Williston asserts that the capacity made available by the Madden Compressor is unnecessary to render service to CIG and, further, the additional capacity is unnecessary to provide service under Williston's Rate Schedules S–2 and T–3 because it is not presently being used in providing these services, the services are interruptible and the delivery point would still be usable after the abandonment.

Williston states that the compressor unit is leased and upon discontinuation of lease it must be returned to the lessor. The cost to remove the compressor unit is estimated to be $12,500. All other facilities would be retired in place and removal would therefore have no impact on the environment.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22782 Filed 10–7–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3398/T531; FRL-3092-8]

E.I. du Pont de Nemours & Co.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residue of the herbicide metsulfuron methyl, methyl 2[[[[(4-methoxy-6-methyl-1,3,5-triazin 2-yl)amino]carbonyl]amino] sulfonyl]benzoate, in or on certain raw agricultural commodities. These temporary tolerances were requested by E.I. du Pont de Nemours and Co.

DATE: These temporary tolerances expire August 27, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Agricultural Products Co., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition PP 6G3398 the establishment of temporary tolerances for residues of the herbicide metsulfuron methyl, methyl 2[[[[(4-methoxy-6-methyl-1,3,5-triazin 2-yl)amino]carbonyl]amino] sulfonyl]benzoate, in or on the raw agricultural commodities grass forage and fodder at 15 parts per million (ppm); grass hay at 60 ppm; milk at 0.2 ppm; and kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352-EUP-136, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 27, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-22837 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180702; FRL-3092-7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States listed below and one quarantine exemption to the California Department of Food and Agriculture. Also listed are crisis exemptions initiated by four States. Also included is the denial of a request for a specific exemption from the Kentucky Department of Agriculture. The exemptions, issued during the month of July, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, quarantine, and crisis, exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Consumer Services for the use of fluazifop-p-butyl on peanuts to control annual grasses; July 29, 1986 to July 31, 1986. Alabama had initiated a crisis exemption for this use. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of carbaryl on pomegranates to control filbert moths; July 30, 1986 to October 23, 1986. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of sethoxydim on alfalfa to control green and yellow foxtail; July 15, 1986 to September 15, 1986. (Libby Pemberton)

4. Colorado Department of Agriculture for the use of methidathion on field corn to control Banks grass mites; July 25, 1986 to August 31, 1986. (Gene Asbury)

5. Colorado Department of Agriculture for the use of cypermethrin on onions to control thrips; July 17, 1986 to September 15, 1986. (Stan Austin)

6. Florida Department of Agriculture and Consumer Services for the use of fluazifop-p-butyl on peanuts to control Texas panicum and crabgrass; July 29, 1986 to July 31, 1986. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

7. Georgia Department of Agriculture for the use of fluazifop-p-butyl on peanuts to control Texas panicum; July 29, 1986 to August 1, 1986. Georgia had

initiated a crisis exemption for this use. (Jim Tompkins)

8. Kansas State Board of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 11, 1986 to September 30, 1986. (Gene Asbury)

9. Massachusetts Department of Food and Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; July 14, 1986 to September 30, 1986. (Jim Tompkins)

10. Nebraska Department of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 25, 1986 to September 15, 1986. (Gene Asbury)

11. North Carolina Department of Agriculture for the use of sethoxydim on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. North Carolina had initiated a crisis exemption for this use. (Jim Tompkins)

12. North Carolina Department of Agriculture for the use of fluazifop-p-butyl on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. North Carolina has initiated a crisis exemption for this use. (Jim Tompkins)

13. North Dakota Department of Agriculture for the use of sodium chlorate on dry edible beans as a harvest aid; July 30, 1986 to October 1, 1986. (Jim Tompkins)

14. Virginia Department of Agriculture and Consumer Services for the use of sethoxydim on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. Virginia had initiated a crisis exemption for this use. (Jim Tompkins)

15. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sodium chlorate on dry edible beans as a harvest aid; July 30, 1986 to October 31, 1986. (Jim Tompkins)

16. EPA issued a quarantine exemption to the California Department of Food and Agriculture for the use of carbaryl on home garden crops to control gypsy moths and Japanese beetles; July 31, 1986 to July 31, 1989. (Libby Pemberton)

Crisis exemptions were initiated by the: 1. Louisiana Department of Agriculture on July 14, 1986, for the use of sethoxydim on sweet potatoes to control Johnson grass, Bermuda grass, and annual grasses. The need for this program has ended. (Libby Pemberton)

2. Nebraska Department of Agriculture on July 8, 1986, for the use of sethoxydim on potatoes to control wild proso millet and volunteer corn. The need for this program has ended. (Libby Pemberton)

3. Oklahoma Department of Agriculture on July 17, 1986, for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites. The need for this program has ended. (Gene Asbury)

4. Texas Department of Agriculture on July 22, 1986, for the use of fluazifop-p-butyl on peanuts to control weeds that escaped control by preemergent herbicides. Since it was anticipated that that program would be needed for more than 15 days, Texas requested a specific exemption to continue it. The need for this program is expected to last until October 1, 1986. (Jim Tompkins)

EPA has denied a request for a specific exemption from the Kentucky Department of Agriculture for the use of B-(4-chloro-phenoxy)-a-(1,1-dimethylethyl)-1*H*1,2,4-triazole-1-ethanol on barley seed to control loose smut disease. A notice of receipt of this request was published in the **Federal Register** of July 30, 1986 (51 FR 27252). The Agency has denied this request because of unresolved questions concerning the potential chronic effects of this active ingredient. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: October 1, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22835 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180705; FRL-3092-6]

Receipt of Application for an Emergency Exemption From Montana To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received a public health exemption request from the Montana State Department of Livestock (hereafter referred to as "Applicant") to use strychnine alkaloid (CAS 57-24-0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before October 23, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180705" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of the information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No., 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a public health exemption for the use of strychnine in eggs to control rabid skunks. Montana has been authorized emergency exemptions for this use for the past 12 years.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (37 FR 5718). This public health exemption request is therefore subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration or a pesticide use that has been cancelled shall be considered a petition for reconsideration of the prior cancellation order. The Administrator

will determine that reconsideration is warranted if he finds that:

(1) The Applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination; and

(2) Such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order. (40 CFR 164.131(a).)

Ordinarily, if the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the cancellation order is justified (40 CFR 164.131(c)).

The Administrator has previously determined that substantial new evidence does exist in connection with the registration request and last year's emergency exemption request, as published in the **Federal Register** of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found will be held on October 7, 1986, as announced in the **Federal Register** of August 8, 1986 (51 FR 28623).

The Agency would consider issuing another emergency exemption for this use of strychnine if by the expiration date of the current emergency exemption (November 6, 1986), strychnine has not been registered for this use, the criteria in § 164.133 are met, an emergency condition is determined to exist, and the States have met their commitment to generate section 3 data in a timely fashion (51 FR 21622).

The Applicant has applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicant in conjunction with the State of Wyoming is currently generating the data necessary to support the registration of this use of strychnine.

The Applicant has requested the use of strychnine for the purpose of suppressing local population of skunks, the main carrier of rabies, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The Applicant considers the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits which contain 0.035 gram of actual strychnine alkaloid.

Placement of strychnine treated eggs is limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: Skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on lands where written permission has been obtained from the landowner. Placement or removal of strychnine egg baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this public health exemption.

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-22836 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180703; FRL-3091-3]

Naled and Methyl Eugenol; Notification of Issuance of a Quarantine Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and issuance.

SUMMARY: EPA has received a quarantine exemption request from the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (hereafter referred to as "Applicant") to use lure baits containing naled (CAS 300-76-5) and methyl eugenol (CAS 93-15-2) for an eradication treatment for the guava fruit fly (*Dacus correctus* Bezzi) in Orange County, California. EPA, in accordance with 40 CFR 166 24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption. Due to the critical nature of the emergency situation, there was insufficient time to solict public comment. The Agency has granted a quarantine exemption for this use of lure baits containing naled and methyl eugenol.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a quarantine exemption for the use of lure baits to eradicate the guava fruit fly from Orange County, California. The Agency was advised on August 12, 1986, that the Applicant had initiated a crisis exemption for this use.

Information in accordance with 40 CFR Part 166 wa submitted as part of this request. Naled is a non-systemic, insecticide-acaricide registered for use on field, vegetable, and orchard crops; livestock and poultry; and agricultural, domestic, medical, and commercial establishments. Methyl eugenol is used as an attractant in the lure bait.

The guava fruit fly is an exotic insect which is widely distributed in Southern Asia occurring from Pakistan eastward through India to Thailand. In India, this fly is a serious pest of a variety of tree fruits. Imported California crops which probably would be infested include stone and pome fruits, especially peaches, and various citrus fruit. Damage occurs when adult female flies lay eggs in the fruit. These eggs hatch into larvae of maggots which tunnel

through the flesh of the fruit making it unfit for consumption.

The first record of the occurrence of the guava fruit fly in the Western Hemisphere was the collection in Garden Grove, Orange County, California, on August 6, 1986. Two additional flies were trapped on August 9, in the surrounding area.

The Applicant has requested the use of two different naled baits to be applied to inanimate objects. The baits will contain 1.75 ounces of naled with either 11.7 ounces or 12.7 ounces of methyl eugenol. The mixture of naled and methyl eugenol will be added to Min-U-Gel to obtain the desired consistency. Baits will be applied by hand equipment to such surfaces as trunks of host trees, telephone poles, etc.

All lure baits will be placed out of normal reach of children and pets. Treatments will consist of a minimum of 600 bait spots per square mile around each fly-find. Treatments will be made on a biweekly to monthly basis. The total quantity of naled required for each treatment is approximately 2 gallons of technical material.

The Applicant claims that there is currently no pesticide registered or available for use against this pest in California.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical, i.e., an active ingredient not contained in any currently registered pesticide. Methyl eugenol is not currently contained in a registered product. The regulations also provide for the opportunity for public comment on the application; however, this comment period can be eliminated if the time available for a decision on the application requires it.

The Agency decided to issue the quarantine exemption on September 5, 1986, after determining that an emergency situation existed, and that this action would not cause unreasonable adverse effects on the environment. The finding of an emergency situation has three bases: (1) This is the first occurrence of the guava fruit fly in the Western Hemisphere; (2) The lack of an effective pesticide or other means to control the guava fruit fly; and (3) Without the proposed use of lure baits containing naled and methyl eugenol, substantial economic losses could be expected if the guava fruit fly becomes established in California. This quarantine exemption expires September 4, 1989.

Dated: September 26, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22556 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-467; FRL-3092-9]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing tolerances for residues of certain pesticide chemicals in or on certain agricultural commodities and withdrawal of petitions previously filed and published in the **Federal Register.**

ADDRESS: By mail, submit comments identified by the document control number [PF-467] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Richard Mountfort, PM-23	Rm. 253, CM#2, 703-557-1830	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
Robert Taylor, PM-25	Rm. 245, CM#2, 703-557-1800	Do.

SUPPLEMENTARY INFORMATION: EPA has: (1) Received the following pesticide petitions (PP) proposing the establishment of tolerances for residues or combined residues of certain pesticide chemicals in or on certain agricultural commodities and (2) requests to withdraw petitions previously filed and published in the **Federal Register.**

1. *PP 6F3444.* Elanco Products Co., Lilly Corporate Center, Indianapolis, IN 46285. Proposes amending 40 CFR 180.420 by establishing a tolerance for the combined residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluoro-methyl)phenyl]-4-(1*H*)-pyridone) and its metabolite (1-methyl-3-(4-hydroxy phenyl)-5-[3-(trifluoro-methyl)-phenyl]-4-(1*H*)-pyridone) in or on the commodity edible crayfish at 0.5 part per million (ppm). The proposed analytical method for determining residues is gas chromatography. (PM-23).

2. *PP 6F3431.* E. I. du Pont de Nemours & Co., Walkers Mill Barley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the commodities barley grain and wheat grain at 0.05 ppm. The proposed analytical method for determining residues is liquid chromatography with a photoconductivity detector. (PM-25).

3. In the **Federal Register** of April 17, 1985 (50 FR 15219), EPA issued a notice which announced that Monsanto Company, 1101 17th St. NW., Washington, DC 20036 filed the following petitions:

a. *PP 5F3157*—proposed tolerances for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl) glycine and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine

salt of glyphosate in or on peanuts and peanuts hulls at 2.0 and 2.5 ppm respectively. (PM–25).

b. *FAP 5H5446*—proposed a regulation to permit the combined residues of glyphosate in the animal feed peanut meal at 3.0 ppm.

Monsanto has withdrawn the petitions without prejudice to future filing in accordance with 40 CFR 180.8. (PM–25).

Authority: 21 U.S.C. 346a and 21 U.S.C. 348.

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–22832 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00230; FRL–3094–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review studies submitted with respect to the pesticide dinoseb.

DATE: Wednesday, October 29, 1986, from 9 a.m. to 3 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and phone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of studies submitted to the Agency regarding adverse effects of the pesticide dinoseb (2-sec-butyl-4,6-dinitrophenol) and its salts, the Agency's analyses of those studies, and regulatory actions to be taken by the Agency in reliance on those studies and analyses.

2. Completion of any unfinished business from previous Panel meetings.

3. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 above may be obtained by contacting: Michael W. McDavit, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7400).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements wil be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments or the written text of oral testimony no later than October 22, 1986, in order to ensure appropriate consideration by the Panel.

Dated: October 3, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–22961 Filed 10–7–85; 9:15 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 024–011013.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Port)
Standard Gypsum Corporation (SGC)

Synopsis: The proposed agreement would permit the Port to lease approximately 4.62 acres of land at the Holland Terminal Area in the Port of Tampa to SGC, an assignee of Trans Atlantic Bulk, Inc., for the handling of gypsum and other bulk products.

Agreement No.: 224–011014.

Title: Long Beach Terminal Agreement.

Parties:

Long Beach Container Terminal, Inc. (LBCT)
Zim American Israeli Shipping Co., Inc. (Zim)

Synopsis: The proposed agreement would permit LBCT to provide terminal and stevedoring services to Zim at the Port of Long Beach.

Agreement No.: 224–011015.

Title: New Orleans Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans (Port)
Coastal Cargo Company (CGC)

Synopsis: The proposed agreement would permit the Port to lease sections 64 through 109 of the shed only of the Galvez Street Wharf, situated on the Inner Harbor-Navigation Canal, City of New Orleans, to CGC for an initial period of one year.

Agreement No.: 224–011016.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Port)
Bermuda Star Line, Inc. (BSL)

Synopsis: The proposed agreement would permit the Port to lease to BSL approximately 1,800 square feet of space in Building 901 for a period of two years.

Agreement No.: 224–011017.

Title: North Carolina State Ports Terminal Agreement (Ports Authority).

Parties:

North Carolina State Ports Authority
Morehead City Ship and Cargo Agency, Inc. (Grantee)

Synopsis: The proposed agreement provides 50 thousand ton annual guarantee of cargo with reduction of wharfage charge on tonnage in excess of 50 thousand tons, in return, the Ports Authority shall grant to Grantee preferential berthing and use of one gantry crane with seventy-two hours notice. The term of the agreement is for one year from the effective date with

option to extend the term of the agreement for two additional periods of one year each.

By order of the Federal Maritime Commission.

Dated: October 3, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-22794 Filed 10-7-86; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement; West Gulf Maritime Assn.

The Federal Maritime Commission hereby gives notice, that on September 26, 1986, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-000082-009.

Title: West Gulf Maritime Association Assessment Agreement.

Parties:

West Gulf Maritime Association (WGMA)

International Longshoremen's Association—AFL-CIO (ILA)

Synopsis: The amendment provides for the indefinite suspension of the cargo assessment provided for in the WGMA resolution of December 6, 1985. The suspension is to be effective beginning October 1, 1986.

By Order of the Federal Maritime Commission.

Dated: October 3, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-22776 Filed 10-7-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Lehigh Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Lehigh Corporation,* Walnutport, Pennsylvania; to engage *de novo* through its subsidiary, Global Leasing Company, Walnutport, Pennsylvania, in the leasing of personal property in accordance with § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted primarily in Pennsylvania, New Jersey, New York, Delaware, and Maryland.

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22753 Filed 10-7-86; 8:45 am]

BILLING CODE 6210-01-M

Itasca Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection as the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Itasca Bancorp, Inc.,* Itasca, Illinois; to acquire B.I.P. Inc., Bloomingdale, Illinois, and thereby engage in data processing activities and courier services pursuant to §225.25(b)(7) and (10) of the Board's Regulation Y through a joint venture.

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22754 Filed 10-7-86; 8:45 am]

BILLING CODE 6210-01-M

Northern of Tennessee Corp., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and

§ 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications as set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must included a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Northern of Tennessee Corp.*, Clarksville, Tennesses; to acquire 100 percent of the voting shares of Bedford County Bank, Shelbyville, Tennessee.

2. *Sardis Banchares, Inc.*, Sardis, Georgia, to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Sardis, Sardis, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Franklin Capital Corporation*, Morton Grove, Illinois; to acquire 100 percent of the voting shares of First State Bank and Trust Company of Franklin Park, Franklin Park, Illinois.,

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22755 Filed 10-7-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of October 1986:

Name: National Advisory Council on Health Care Technology Assistant.

Date and Time: October 30-31, 1986, 3:00 pm.

Place: Sheraton Grand Hotel, Grand Ballroom Center, 525 New Jersey Avenue, NW, Washington, DC 20001. Closed October 31, 11:15 am to 12:00 Noon. Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center of Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Stop 330, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5652.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-22777 Filed 10-7-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

Public Workshop; Determination of Aluminum in Parenteral Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss determination of aluminum in parenteral products.

DATE: The workshop will be held on November 6, 1986, 9 a.m. to 5 p.m.

ADDRESS: The workshop will be held at the Lister Hill Auditorium, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: A.T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

SUPPLEMENTARY INFORMATION: FDA's Center for Drugs and Biologics, Division of Metabolism and Endocrine Drug Products will hold a workshop entitled "Aluminum Content of Parenteral Products." The participants and panels will review and consider the current knowledge of aluminum toxicity in clinical medicine, existent aluminum monitoring, the origin and clinical effects of aluminum loading and methodology for quantitative aluminum determination in parenteral products.

Requests for additional information or to participate in these discussions should be directed to A.T. Gregoire (address above).

Dated: September 30, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22752 Filed 10-7-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-401-N]

Medicare Program; Payment to Hospices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1985 through October 31, 1986. In addition, this notice announces the increase in the daily rates of payment for hospice care that is specified in section 1814(i)(1) of the Social Security Act as amended by section 9123 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

EFFECTIVE DATE: The payment cap is effective for the period November 1, 1985 through October 31, 1986. The revised rates are effective for hospice care furnished on or after April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Randal Ricktor, (301) 597-1806.

SUPPLEMENTARY INFORMATION: Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), which was enacted on September 3, 1982, expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries. The principal changes made by section 122 are contained in sections 1812 (a)(4) and (d), 1813(a)(4), 1814 (a)(7) and (i), 1816(e)(5) and 1861(dd) of the Social Security Act (the Act). Section 1814(i) of the Act was further amended on August 29, 1983 by section 1(a) of Pub. L. 98-90 and on November 8, 1984 by section 1(a) of Pub. L. 98-617. Our regulations implementing the hospice program under Medicare were published in the **Federal Register** on December 16, 1983 (48 FR 56008) and are set forth at 42 CFR Part 418.

Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in § 418.302.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) was enacted. Section 9123(b) of Pub. L. 99-272 amended section 1814(i)(1) of the Act to provide for an increase in the rates for the four categories of payment for hospice care. As amended, section 1814(i)(1) of the Act specifies that, for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care is $63.17 and the daily rate of payment for the other three services is increased by $10. Set forth below are the four categories of services and the rates that were in effect before the enactment of Pub. L. 99-272 and the rates that went into effect for care furnished on or after April 1, 1986.

Category of payment	Rates	
	Before April 1, 1986	On or after April 1, 1986
Routine home care	$53.17	$63.17
Continuous home care	358.67	368.67
Inpatient respite	55.33	65.33
General inpatient	271.00	281.00

The provisions of section 9123(b) of Pub. L. 99-272 are self-implementing and we have been making payment for hospice care under the new rates since the law was enacted.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap. The payment cap is described in regulations at § 418.309. Section 1814(i)(2)(B) of the Act and § 418.309 of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500. Each hospice's cap by amount is calculated by multiplying the yearly cap by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

Section 1814(i)(2)(B) of the Act and § 418.309(a) specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year. For purposes of the cap year that runs from November 1, 1985 through October 31, 1986, an index is needed to measure inflation (or deflation) from March 1984 to March 1986 (the fifth month of the accounting year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

BLS has recently released figures that indicate a March 1986 price level in the medical care expenditure category of the CPI of 425.8 (1967 = 100.0). This figure is divided by the March 1984 price level of 374.5 to yield an index of 1.137.

Therefore, the new hospice cap is the product of $6,500 and 1.137; that is, $7,391. This cap applies to hospices for care furnished from November 1, 1985 to October 31, 1986.

This notice merely announces amounts required by legislation and by § 418.309. It is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) and 42 CFR 418.309)
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-22772 Filed 10-7-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer, at (202) 395-7340.

Title: 25 CFR, Part 125, Payment of Sioux Benefits

Abstract: Prescribes the eligibility criteria and application procedures governing payment of "Sioux Benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act; and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). The data on this form is used by the BIA to determine the applicant's eligibility for Sioux Benefits.

Note: This is not a new program or a new information collection by BIA.

Bureau Form Number: BIA-4210.

Frequency: Nonrecurring.

Description of Respondents: Eligible Cheyenne River Sioux Indians of the Cheyenne River Reservation, South Dakota.

Annual Responses: 260.

Annual Burden Hours: 130.

Bureau Clearance Office: Ann Bolton (202) 343-3577.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-22812 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-060-06-4212-14]

Realty Action Land Sale Appraisal Update for Lands in Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Land sale appraisal update for lands in Crook and Weston Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent withe FLPMA or other applicable laws.

These parcels are continuing to be reoffered for sale under competitive procedures as per **Federal Register** Notices which appeared as follows:

Crook County: 49 FR 43803–43803 (October 31, 1984), 49 FR 11583–11584 (March 22, 1985).
Weston County: 50 FR 11583 (March 22, 1985).

The planning document, environmental assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746–4453).

Serial No.	Legal description	Acreage	Appraised value
Crook County:			
W-86202.....	T. 54 N., R. 62 W., 6th P.M., Section 28: SW¼NE¼.	40.00	$5,000.00
W-86211.....	T. 55 N., R. 64 W., 6th P.M., Section 6: Lot 16.	42.49	7,000.00
Weston County:			
W-88630.....	T. 47 N., R. 61 W., 6th P.M., Section 26: SW¼NW¼.	40.00	8,400.00

Dated: September 30, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86–22810 Filed 10–7–86; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Golden Gate National Recreation Area; Public Hearing

Section 460bb–2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb–2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely with the boundaries of the GGNRA. The legislation also requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Thursday, November 6, 1986, in order to present to the public and solicit its views on a new one-story commissary facility at the Presidio of San Francisco. The hearing will commence at 7:30 p.m. (PST) at Building 201, Fort Mason, San Francisco, California.

The new building will be one-story, 44 feet tall, and will consolidate all commissary retail and warehousing operations and administration offices under one roof. New construction will be 87,309 square feet. The new building will incorporate an existing storage building (#653) which is 5931 square feet in size. Total space in the new commissary will be 93,240 square feet versus 94,334 square feet in the present commisary.

A fact sheet on the commissary construction project and an environmental document are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556–4484.

The hearing will also include a Superintendent's Report from Golden Gate National Recreation Area General Superintendent Brian O'Neill.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the afforementioned public hearing. The not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on this construction project. Statements will be accepted until November 21, 1986.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: October 2, 1986.

W. Lowell White,

Acting for Regional Director, Western Region.

[FR Doc. 86–22791 Filed 10–7–86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[CA-010-06-4322-02]

Bakersfield District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given that the Bakersfield District Grazing Advisory Board to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on Thursday, November 13, 1986 in Room 335 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California. The meeting will begin at 9 a.m. and last until approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include election of a chairman and discussion of FY86 project accomplishments, FY87 planned project, and grazing fee collection fee procedures.

The meeting is open to the public. Interested persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by November 11, 1986.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for inspection and reproduction during regular business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta L. Witt, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191.

Dated: September 29, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86–22744 Filed 10–7–86; 8:45 am]

BILLING CODE 4310-40-M

[AZ-940-06-4220-10; A-19077-A]

Notice of Conveyance of Public Lands in Coconino County, AZ

September 29, 1986.

In an exchange of lands made under the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94-579; 90 Stat. 2743), the following lands have been conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 1 E.,
Sec. 22, E½E½NW¼NE¼.

The area described aggregates 10.00 acres in Coconino County, according to the official plats of surveys of said land, on file in the Bureau of Land Management.

The real estate value of both the selected and offered lands in the exchange were appraised at approximately equal value.

Upon acceptance of title to the land, they became part of the Kaibab National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the land should be addressed to the Forest Supervisor, Kaibab National Forest, 800 S. 6th Street, Williams, Arizona 86046.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[Doc. 86-22745 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-32-M

(AZ-940-06-4220-10; A19123)

Notice of Conveyance of Public Mineral Estate; Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ.

September 29, 1986.

Notice is hereby given that the mineral estate in the following described land has been transferred out of Federal ownership pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 in exchange for State-owned minerals. The exchange was made based on approximately equal values.

The mineral estate transferred to the State underlies the following described State-owned surface:

Gila and Salt River Meridian, Arizona,

T. 1 N., R. 16 E.,
Sec. 19, lots 1 thru 4, incl., W½
T. 6 N., R. 7 W.,
Sec. 3, lot 4, SW¼NW¼; W½SW¼; sec. 4, lots 1 thru 4, incl., S½N½, S½.
T. 7 N., R. 5 W.,
Sec. 7, lots 3, 4, E½SW¼, SE¼;
Sec. 8, SW¼, S½SE¼;
Sec. 14, W½E½, W½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 27, N½N½;
Sec. 34, all;
Sec. 35, NW¼.
T. 7 N., R. 6 W.,
Sec. 1, lots 3, 4, S½NW¼, SW¼;
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 8, SE¼;
Sec. 10, all;
Sec. 13, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 14, all;
Sec. 19, lots 1, 2, E½NW¼, W½NE¼, NW¼SE¼;
Sec. 20, E½;
Sec. 21, all;
Sec. 28, N½, W½SW¼, NE¼SE¼;
Sec. 29, SE¼;
Sec. 30, lots 1 thru 4, incl., W½NE¼; NE¼NW¼, E½SW¼;
Sec. 31, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, S½NE¼, SE¼.
T. 7 N., R. 8 W.,
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, W½SW¼;
Sec. 15, N½.
T. 7 N., R. 9 W.,
Sec. 13, N½;
Sec. 19, lots 1 thru 4, incl., E½W½, NE¼;
Sec. 20, N½;
Sec. 29, all;
Sec. 30, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, W½.
T. 7 N., R. 10 W.,
Sec. 1, lots 1 thru 4, incl., S½N½, SW¼;
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 9, N½, SW¼;
Sec. 10, N½;
Sec. 11, N½;
Sec. 12, NW¼;
Sec. 17, N½;
Sec. 20, S½N½, S½;
Sec. 21, S½N½, S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, E½, NW¼, E½SW¼, E½SW¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, N½, SW¼, S½SE¼, NW¼SE¼;
Sec. 29, all;
Sec. 35, all.
T. 8 N., R. 6 W.,
Sec. 35, all.
T. 8 N., R. 7 W.,
Sec. 4, lots 1 thru 4, incl., S½;
Sec. 7, lots 3, 4, E½SW¼, SE¼;
Sec. 8, NE¼, S½;
Sec. 9, all;
Sec. 31, lots 1 thru 4, incl., E½W½, S½NE¼, SE¼.
T. 8 N., R. 8 W.,
Sec. 9, NW¼, S½;
Sec. 35, all.
T. 8 N., R. 10 W.,
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 6 S., R. 10 E.,
Sec. 13, E½, NW¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, S½;
Sec. 23, S½;
Sec. 24, NE¼, S½;
Sec. 25, all;
Sec. 26, all;
Sec. 27, E½, NE¼NW¼, S½NW½, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 34, all;
Sec. 35, all.
T. 6 S., R. 11 E.,
Sec. 17, all;
Sec. 18, lot 4, E½E½;
Sec. 19, lots 1 thru 4, incl. E½, W½, E½;
Sec. 22, N½, E½SW¼, SE¼.
T. 6 S., R. 12 E.,
Sec. 4, SW¼NW¼, SE¼SE;
Sec. 9, all;
Sec. 10, E½NE¼, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 11, N½, SE¼;
Sec. 12, all;
Sec. 14, N½, S½S½;
Sec. 15, E½NE¼;
Sec. 17, all;
Sec. 18, lots 1 thru 8, incl., E½W½, E½;
Sec. 19, lots 1 thru 8, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 23, N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 27, W½NW¼, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 8 incl., E½W½, E½;
Sec. 31, lots 1 thru 8 incl., E¼W¼, E½;
Sec. 33, N½, N½S½.
T. 6 S., R. 13 E.,
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, S½;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 22, all;
Sec. 23, all;
Sec. 26, all;
Sec. 27, all;
Sec. 33, S½;
Sec. 34, N½, N½SW¼;
Sec. 35, all.
T. 6 S., R. 14 E.,
Sec. 7, lots 1 thru 4, incl., E½W½, E½;
Sec. 9, all;
Sec. 13, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 23, S½;
Sec. 26, N½;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 thru 4, incl., NE½, E½W½, N½SE½, SW¼SE¼;
Sec. 33, N½, N½SW¼;
Sec. 34, E½, N½NW¼, S½SW¼;
Sec. 35, all.
T. 9 S., R. 9 E.,
Sec. 26, N½;
Sec. 27, N½.
T. 10 S., R. 6 E.,
Sec. 15, SW¼;
Sec. 17, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;

Sec. 19, lots 1 thru 4, incl.., E½W½, E½;
Sec. 20, all;
Sec. 21, S½;
Sec. 22, W½;
Sec. 23, S½;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, W½, SE¼;
Sec. 28, all;
Sec. 29, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 10 S., R. 7 E.,
Sec. 4, S½;
Sec. 9, N½, SW¼;
Sec. 10, W½;
Sec. 14, S½;
Sec. 15, all;
Sec. 17, all;
Sec. 18, all;
Sec. 20, W½NE¼, SE¼NE¼, NE¼, S½;
Sec. 21, NE¼, S½NW¼, S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, lots 1 thru 4, incl., 9 thru 16, incl., 21 thru 24 incl., S½SW¼;
Sec. 25, lots 1 thru 4, incl., 9 thru 24 incl., SW¼;
Sec. 26, NE¼, S½;
Sec. 28, all;
Sec. 29, all;
Sec. 35, all.
T. 10 S., R. 8 E.,
Sec. 1, lots 2 thru 4, incl., S½N½, N½S½;
Sec. 14, S½;
Sec. 15, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 19, lots 1 thru 4, incl., E½W½, E½;
Sec. 21, all;
Sec. 23, all;
Sec. 24, N½;
Sec. 26, N½;
Sec. 27, N½.
T. 10 S., R. 9 E.,
Sec. 27, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 28, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 33, N½, W½SW¼.
T. 11 S., R. 6 E.,
Sec. 1, lots 1 thru 4, incl., S½N½, S½;
Sec. 3, lots 3, 4, S½NW¼;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 18, lots 1 thru 4, incl.;
Sec. 19, lots 1 thru 4, incl., E½W½, E½;
Sec. 20, NE¼, W½SW¼, E½SE¼;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 28, all;
Sec. 29, E½NE¼, W½NW¼, SW¼;
Sec. 30, lots 1 thru 4, incl., E½W½, E½;
Sec. 31, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.

Comprising 105,900.35 acres in Gila, Maricopa, Pima, Pinal, and Yavapai Counties.

The mineral estate reconveyed to the United States underlies the following described Federally-owned surface:

Gila and Salt River Meridian, Arizona,

T. 11 N., R. 15 W.,
Sec. 2, lots 1 thru 4 incl., S½N½, S½;
Sec. 16, SE¼;
Sec. 32, all.
T. 11 N., R. 16 W.,
Sec. 2, SW¼;
Sec. 16, N½, N½SW¼, N½SE¼, SE¼SE¼.
T. 12 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½;
Sec. 32, NE¼.
T. 12 N., R. 15 W.,
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl. S½;
Sec. 16, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., SW¼, NW¼SE¼, S½SE¼;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 18 W.,
Sec. 2, S½;
Sec. 36, SW¼SW¼.
T. 13 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 13 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 13 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½.
T. 13 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 13 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 13 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 13 N., R. 19 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½.
T. 14 N., R. 12 W.,
Sec. 32, all.
T. 14 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, SW¼;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 10, all;
Sec. 16, all;
Sec. 24, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, N½, NW¼SW¼, S½SW¼, W½SE¼;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 12 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 15 N., R. 13 W.,
Sec. 36, all.
T. 15 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 6, lots 1 thru 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10, all;
Sec. 16, all;
Sec. 18, lots 1 thru 4, incl., E½NW¼, E½;
Sec. 20, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, all;
Sec. 28, all;
Sec. 30, lots 3, 4, E½W½, E½;
Sec. 32, all;
Sec. 34, all;
Sec. 36, all.
T. 15 N., R. 15 W.,
Sec. 10, all;
Sec. 12, all;
Sec. 14, N½, SW¼;
Sec. 16, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, all;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 16 N., R. 13 W.,
Sec. 16, all;
Sec. 36, NE¼, S½NW¼, E½NE¼NW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼.
T. 16 N., R. 14 W.,
Sec. 16, N½, N½NW¼SE¼, E½SE¼;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 28, all;
Sec. 32, W½;
Sec. 34, all;
Sec. 36, all.
T. 16 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½;
Sec. 14, N½, SE¼;
Sec. 16, all;
Sec. 20, all;
Sec. 24, all;
Sec. 28, W½NE¼, NW¼S½;
Sec. 32, all;
Sec. 34, all.
T. 16 N., R. 16 W.,
Sec. 16, all;
Sec. 32, all;
Sec. 36, SE¼NW¼, E½SW¼.
T. 16 N., R. 17 W.,
Sec. 2, S½NW¼, SW¼;
Sec. 16, all;
Sec. 32, E½;
Sec. 36, SW¼NE¼, W½, S½SE¼.
T. 16 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;

Sec. 16, all;
Sec. 36, W½.
T. 16 N., R. 19 W.,
Sec. 16, all;
Sec. 32, all.
T. 16 N. R. 20 W.,
Sec. 36, all.
T. 16½ N., R. 13 W.,
Sec. 36, all.
T. 16½ N., R. 14 W.,
Sec. 32, all.
T. 16½ N., R. 15 W.,
Sec. 32, all.
T. 16½ N., R. 16 W.,
Sec. 32, N½, N½SE¼, SE¼SE¼;
Sec. 36, NE¼, E½NW¼, S½.
T. 16½ N., R. 17 W.,
Sec. 36, all.
T. 16½ N. R. 19 W.,
Sec. 36, all.
T. 17 N., R. 13 W.,
Sec. 36, lots 1 thru 4, incl., N½S½, N½.
T. 17 N., R. 14 W.,
Sec. 16, all;
Sec. 36, E½.
T. 17 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 17 N., R. 16 W.,
Sec. 16, all;
Sec. 36, all.
T. 17 N., R. 18 W.,
Sec. 36, all.
T. 18 N., R. 17 W.,
Sec. 16, all.
T. 19 N., R. 15 W.,
Sec. 32, all;
Sec. 36, all.
T. 22 N., R. 19 W.,
Sec. 16, all.
T. 23 N., R. 14 W.,
Sec. 16, N½, SW¼, NW¼SE¼;
Sec. 32, all.
T. 23 N., R. 18 W.,
Sec. 16, all.
T. 23, N., R. 19 W.,
Sec. 36, lots 1 thru 4, incl. W½E½, W½.
T. 24 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 36, lots 1 thru 4, incl. W½W½.
T. 24, N., R. 17 W.,
Sec. 2, lots 1, 2, 4, S½.
T. 25 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, E½ N½NW¼,SW½;
Sec. 36, all.
T. 25 N., R. 15 W.,
Sec. 2, lots 1 thru 3, incl., S½N½,S½.
T. 25 N., R.l 16 W.,
Sec. 32, E½, NE¼, NW¼, SW¼;
Sec. 36 all.
T. 25 N., R. 17 W.,
Sec. 36 all.
T. 25 N., R. 20 W.,
Sec. 36, all.
T. 26 N., R. 14 W.,
Sec. 16, lot 1, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 32, all.
T. 26 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 26 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½,S½.
T. 26 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 26 N., R. 20, W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½;
Sec. 16, all.
T. 27 N., R. 15 W.,
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 27 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 27 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, SW¼, W½SE¼.
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 27 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½;
Sec. 36, all.
T. 28 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, N½, SW¼, NW¼SE¼.
T. 28 N., R. 17 W.,
Sec. 32, N½, N½S½.
T. 28 N., R. 19 W.,
Sec. 32, all.

Comprising 106,366.24 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public mineral interests and acquisition of the State-owned mineral interests by the Federal Government.

At 9 a.m. on October 30, 1986, the reconveyed mineral estate described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9 a.m. on October 30, 1986, the reconveyed land described above will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits. All applications and offers received prior to 9 a.m. on October 30, 1986 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–22746 Filed 10–7–86; 8:45 am]

BILLING CODE 4310-32-M

[NV-030-06-4212-13; N-42355]

Realty Action Exchange of Public Lands in Washoe County, NV

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, NV

T. 20 N., R. 22 E.,
Sec. 28, N½, N½S½;
Sec. 30, E½SE¼, E½W½SE¼.

The area described above aggregates 600 acres.

In exchange for these lands, the Federal Government will acquire non-federal lands in Washoe County from Tracy Company, c/o SEA, Incorporated, 950 Industrial Way, Spars, Nevada 89431, described as follows:

Mount Diablo Meridian, NV

T. 20 N., R. 21 E.,
Sec. 13, All;
Sec. 23, All;
Sec. 25, All.
T. 20 N., R. 22 E.,
Sec. 19, Lots 1–4, E½, E½W½.

The area described above aggregates 2562.4 acres.

The purpose of this exchange is to achieve more efficient management of the public lands through consolidation of ownership and to acquire land with wildlife habitat value. The exchange is consistent with Bureau planning and is supported by the Washoe County Department of Comprehensive Planning. The public interest will be well served by making the exchange.

The exact acreage of non-federal lands to be acquired through exchange will be dependent upon final appraisal. The surface and mineral estates of both the non-federal and public lands will be exchanged, subject to valid existing rights.

In accordance with regulations contained in 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from

appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the **Federal Register** of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs first.

Patent to lands to be transferred from Federal ownership will contain the following reservation:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patent will be issued subject to:

1. Those rights for telephone line purposes which have been granted to Nevada Bell, its successors or assigns, by right-of-way grants CC–020776 and CC–021089, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 961.

2. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grants Nev-056838, Nev-058691, N-5933, and N-7639, under the Act of March 4, 1911, 36 Stat. 1253; 43 U.S.C. 961.

3. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grants CC–025152, N–24394 and N–30813, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C. 1761–1771.

4. Those rights for highway purposes which have been granted to Nevada State Department of Transportation, its successors or assigns, by right-of-way grant Nev–044040 under the Act of November 9, 1921, 142 Stat. 212–216; 23 U.S.C. 18.

5. Those rights for gas pipeline purposes which have been granted to Southwest Gas Corporation, its successors or assigns, by right-of-way grant Nev–059799 under the Act of February 25, 1920, as amended, 41 Stat. 449; 30 U.S.C. 185.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701.

Dated this 30th day of September, 1986.

Norman L. Murray,

District Manager.

[FR Doc. 86–22747 Filed 10–7–86; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–183]

Indomethacin; Commission Decision to Review Portions of Initial Determination; Schedules for Filing of Written Submissions on Certain Issues Under Review, and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: The U.S. International Trade Commission has determined to review portions of an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The portions of the ID that will be reviewed are the presiding administrative law judge's (ALJ's) determination regarding (1) the finding of a statutory deadline, (2) the expiration of U.S. Letters Patent 3,619,284, (3) patent infringement, (4) domestic industry, (5) efficient and economic operation of the domestic industry, (6) substantial injury, and (7) tendency to substantially injure. The parties to the investigation and interested government agencies are requested to file written submissions on the issues under review as indicated below and on remedy, the public interest, and bonding. Comments from other interested persons will also be accepted on the issues of remedy, the public interest, and bond.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20426, telephone 202–523–0480.

SUMMARY: On August 13, 1986, the presiding ALJ issued an ID finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Complainant Merck & Co., Ltd. (Merck) filed a petition for review of the ID pursuant to § 210.54(a) of the Commission's rules (19 CFR 210.54(a)). No responses to the petition for review were filed and no comments were received from other Government agencies.

Having examined the record, including the petition for review, the Commission has determined to review all of the ID except for that portion of the ID relating to the validity of the patent in controversy. U.S. Letters Patent 3,619,284.

The Commission requests that the parties file briefs on review limited to the following issues:

1. Assuming that the law of some state of the United States is controlling in the interpretation of the assignment agreement and the agreement executed by Merck and Sumitomo Chemical Co., Ltd., on December 27, 1983, which state law is that?

2. What is the law of the controlling state relevant to the interpretation of the assignment agreement and agreement between Merck and Sumitomo?

The Commission does not wish the receive briefs on any other review issues.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred, and contemplates that some form of relief is appropriate, it must consider the effect that such relief would have upon: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) the U.S. production of articles which are like or indirectly competitive with those which are the subject of the investigation, and (4) U.S. Consumers. The Commission is, therefore, interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the enumerated public interest factors.

If the Commission finds that a violation of section 337 has occurred and orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is, therefore, interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are requested to file written submissions addressing the two issues as indicated above and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested

to submit a proposed remedial order for the Commission's consideration. Written submissions on the above-noted review issues and on remedy, the public interest, and bonding must be filed no later than the close of business on October 15, 1986. Reply submissions on the above-noted review issues and on remedy, the public interest, and bonding must be filed not later than October 22, 1986. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on October 22, 1986. No further submissions will be permitted.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of The Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission Rule 210.55 (19 CFR 210.55).

Notice of this investigation was published in the Federal Register of February 23, 1984 (49 FR 6810–11).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: September 29, 1986

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–22807 Filed 10–7–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–246]

Certain Xenon Lamp Dissolver Slide Projectors; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven Schwartz, Esq. and Dr. Cheri Taylor, Esq. of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of Steven H. Schwartz, Esq. and Gary Rinkerman, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: October 2, 1986.

Lynn Levine,

Acting Director, Office of Unfair Import Investigations, U.S. International Trade Commission.

[FR Doc. 86–22808 Filed 10–7–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19 (Sub-No. 114)]

The Baltimore and Ohio Railroad Co.; Discontinuance of Services; In Washington County, MD; Findings

The Commission has found that the public convenience and necessity permit The Baltimore and Ohio Railroad Company to discontinue service over a 12.09-mile line of railroad of the Western Maryland Railroad Company between Station 5380+89 (milepost 104.90) at or near Big Pool, MD, and Station 6019+20 (milepost 116.90) at or near Hancock, MD, in Washington County, MD.

A certificate will be issued authorizing discontinuance unless within1 5 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the Appliant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22877 Filed 10–7–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Cleveland Steel Container Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 29, 1986 a proposed consent decree in *United States* v. *Cleveland Steel Container Corporation*, Civil Action No. 85–2382 was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree concerns control of air pollution at Cleveland Steel's manufacturing plant in Niles, Ohio. The proposed consent decree requires the defendant to install air pollution control equipment and pay a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cleveland Steel Container Corporation*, D.J. Ref. 90–5–2–1–738.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and at the Region V Office of the Environmental Protection Agency, 16th Floor, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost)

payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-22802 Filed 10-7-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Toxic Substances Control Act; Commonwealth Edison Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Commonwealth Edison Company*, Civil Action No. 84 C 1597, was lodged with the United States District Court for the Northern District of Illinois. The complaint filed by the United States alledged that defendant Commonwealth Edison Company ("Edison") had violated section 17 of the Toxic Substances Control Act ("TSCA") by failing adequately to clean up polychlorinated biphenyls ("PCBs") released from Edison's pole mounted electrical equipment at numerous locations throughout Edison's northern Illinois service area. The complaint also alleged that PCB contamination from Edison's electrical equipment posed an unreasonable risk to health and the environment within the meaning of section 7 of TSCA.

The proposed Decree establishes requirements for cleanup of PCBs released from pole mounted capacitors owned and operated by Edison. Edison has identified approximately 300 past spills that would be governed by the proposed Decree. The Decree also addresses all PCB capacitor releases that may occur in the future.

The proposed Decree establishes standards of decontamination for "High Contact" areas, such as residential properties, work areas or playgrounds, and separate standards of decontamination for other areas, referred to as "Reduced Contact" areas. In addition, for both "High Contact" and "Reduced Contact" areas, the proposed Decree establishes separate limits for residual contamination on hard surfaces (expressed in micrograms per 100 square centimeters, or "$\mu g/100cm^2$") and for contamination in soil, vegetation or other media (expressed in parts per million, or "ppm").

The decontamination standards in the proposed Decree limit the mean concentration of PCBs within the area contaminated as a result of each release (the "Affected Area"). Thus, under the proposed Decree, at each spill site in a "High Contact" area, Edison must reduce mean PCB concentrations throughout the Affected Area to 20 $\mu g/100cm^2$ on hard surfaces and 5 ppm in soil or other media. At spill sites in "Reduced Contact" areas, Edison must reduce the mean PCB concentration in the Affected Area to 50 $\mu g/100cm^2$ on hard surfaces and to 10 ppm in soil and other media.

After achieving applicable standards of decontamination, Edison must address any remaining contamination "hot spots" by performing additional cleanup within a five foot radius of any sample location where PCBs are detected in excess of specified "peak" concentrations (50 $\mu g/100cm^2$ or 15 ppm at "High Contact" sites; and 100 $\mu g/100cm^2$ or 15 ppm at "Reduced Contact" sites).

Under the proposed Decree, Edison is required to replace, rather than clean, "intimate contact" items such as household or garden furniture and playground equipment. However, Edison is not required automatically to replace contaminated interior surfaces of homes or automobiles, if Edison either reduces PCB levels on such items to 1 $\mu g/100cm^2$ or demonstrates that further cleanup is not feasible and that residual PCB levels do not pose a risk to health or the environment.

The proposed Decree sets forth extensive sampling and analytical requirements which Edison must follow to document PCB contamination levels at all spill sites governed by the Decree. In addition, the proposed Decree sets forth a detailed description of spill response procedures, including requirements for restricting access to contaminated areas, providing notice to owners of affected properties, and minimizing runoff and other routes of migration of PCBs to uncontaminated areas.

In addition to the PCB spill cleanup requirements, the proposed Decree requires Edison to complete a phase-out of pole-mounted PCB capacitors by January 1, 1987.

The proposed Decree prescribes stipulated penalties for failure to attain applicable standards of decontamination or to comply with capacitor phase-out requirements or other provisions of the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth Edison Company*, with the applicable D.J. Reference No. 90-5-1-1-2078 (N.D. Illinois).

The proposed Consent Decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $14.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22804 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Crest Products, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent judgment in *United States* v. *Crest Products, Inc.*, Civil Action No. 85-5739 (HAA), was lodged with the United States District Court for the District of New Jersey on September 24, 1986. The consent decree provides for civil penalties for past noncompliance. The plant in question has ceased operations.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Crest Products, Inc.*, D.J. Ref. No. 90-5-1-1-2474.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of

the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22803 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; General Electric Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *General Electric Company*, Civil Action No. 84-CV-681, was lodged with the United States District Court for the Northern District of New York on September 19, 1986. The consent decree establishes a compliance program for the Waterford, New York, plant owned and operated by General Electric Company, to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its National Pollutant Discharge Elimination System ("NPDES") Permit and requires payment of a civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *General Electric Company*, D.J. Ref. No. 90-5-1-1-2162.

The consent decree may be examined at the office of the United States Attorney, Northern District of New York, 369 Federal Building, 100 South Clinton Street, Syracuse, New York 13260; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22805 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Accident Reports, Safety Recommendations and Responses to Safety Recommendations

Report No.	NTIS No.	Date	Subject
NTSB/AAR-86/05	PB86-910406	8/15/86	Aircraft Accident Report: Delta Air Lines, Inc., Lockheed L-1011-385-1, N726DA, Dallas/Fort Worth—International Airport, Texas, August 2, 1985.
NTSB/AAR-86/01, Summary	PB86-910404	6/30/86	Aircraft Accident/Incident Summary Reports (Soldotna, Alaska—2/4/85; San Juan, Puerto Rico—6/27/85
NTSB/RAR-86/03	PB86-916304	8/5/86	Railroad Accident Report: Rear end Collision of Metro-Dade Transportation Administration Trains Nos. 172-171 and 141-142, Miami, Florida, June 26, 1985.
NTSB/HAR-86/02	PB86-916202	85/86	Highway Accident Report: Multiple Vehicle Collision and Fire, U.S. 13 Near Snow Hill, North Carolina, May 31, 1985.

Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports, call 703-487-4650 and to order subscriptions to report, call 703-487-4630.

SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
H-86/65	Bureau of Motor Carrier Safety	9/16/86	Amend Part 391 of the Federal Motor Carrier Safety Regulations to provide for declaring out-of-service at the time and place of a driver/vehicle roadside inspection.
H-86/66	...do	...do	Study the feasibility of implementing a point system for safety inspection violations.
H-86/67	...do	...do	Oversee and monitor the States which participate in the Motor Carrier Safety Assistance Program.
H-86/68	FHA	9/16/86	Modify the Manual on Uniform Traffic Control Devices to include language that requires contractors to maintain highway regulatory signs during construction.
H-86/69	...do	...do	Evaluate techniques used by States to prohibit commercial vehicles from routes.
H-86/70	Arkansas State Highway and Trans. Dept.	9/16/86	Provide language in work permit specifications that require contractors to maintain highway regulatory signing along roadsides while construction activities are going on.
H-86/71	Governors: Alaska, Florida, New Mexico, Texas.	9/16/86	Participate in the Bureau of Motor Carrier Safety's Motor Carrier Safety Assistance Program.

Single copies of the recommendation letters are available on written request to: Public Inquires Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

RESPONSES TO SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
H-86-38—40	Univ. of New York	8/29/86	School bus passenger seats equipped with safety belts.
H-85-22	Colorado Governor	9/2/86	States should adopt certain accident reporting criteria regarding child occupants.
H-85-49	Alabama Governor	9/2/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	...do	...do	A reporting system to give direct access to the BAC file.

RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
H-85-49	Colorado Governor	9/4/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-85-22	Dept. of CA Highway Patrol	9/5/86	Collection of child restraint use in traffic collision reports.
H-86-44	National Assoc. of State Medical Services Directors.	9/6/86	Encourage manufacturers of passenger vehicles to provide retrofit assemblies to convert lap-only belt systems to lap/shoulder belt systems.
H-86-47	do	do	Determine the feasibility of requiring that 3-point lap/shoulder belts be provided at every seating position in newly manufactured passenger vehicles manufactured for sale in the U.S.
H-85-49	Arkansas Highway Safety Program	9/8/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-86-58	Coop. Ext. Service	9/10/86	Accidents with farm equipment on public roads.
H-85-49	Conn. Governor	9/17/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-82-38	NHTSA	9/17/86	Examine the crash performance of vans in rollovers to determine if there is a tendency for doors to jam.
H-79-3—4	Wash. Dept. of Transp.	9/12/86	Railroad grade crossings improvements.
H-85-22	Arizona Governor	9/22/86	Collection of child restraint use in traffic collision reports.
A-86-1	FAA	9/12/86	Issue an AD to require an inspection of Boeing 747 airplanes having a minimum number of operating cycles to verify that all bolts are torqued adequately.
A-86-2	do	do	Determine appropriate interval for checking the bolt torque.
A-86-3	do	do	Notify foreign governments with operators of Boeing 747 airplanes of the circumstances of the accident involving the British Airways Boeing 747-136 on December 15, 1985 in Boston, MA.
A-84-129	FAA	9/12/86	Issue instructions to air carrier POIs responsible for F-27 airplanes to require air carriers to install a means to prevent the hinge pins from coming free.
A-86-54	FAA	9/16/86	Conduct a review of the fuel system installed in 1967-1972 Bellanca Viking and Super Viking airplanes.
A-86-55	do	do	Require the Bellanca Aircraft Corporation to revise the airplane flight manuals of 1967-1972 Bellanca Viking and Super Viking airplanes.
A-86-56	do	do	Require the Bellanca Aircraft Corporation to disseminate to all owners and operators of 1967-1972 Bellanca Viking and Super Viking models a Safety Advisory.
A-86-57	do	do	Revise AD 76-23-03 to require inspection of the exhaust system on these airplanes for cracks and for freedom of movement.
A-86-58	do	do	Publish in the FAA Advisory Circular No. 43-16, details of accidents in which Bellanca Viking airplanes have experienced engine power loss.
A-86-59	do	do	Issue and AD to require the installation of fuel quick-drain valves in the wing fuel tanks of Bellanca Vikings and Super Viking airplanes.
A-86-60	do	do	Issue an AD to require an inspection of the wing fuel filler well drain to ascertain that it is open.
A-84-87	FAA	9/19/86	Conduct a DSI of Mooney Model M-20 and M-20A airplanes to ascertain the degree of undetected structural deterioration.
A-84-89	do	do	Issue an AD requiring that owners and operators of Mooney M-20 and M-20A airplanes shelter the airplanes from the environment when parked.
A-86-94	National Fire Protection Association	9/22/86	Advice Technical Committee of the circumstances of the emergency response to the accident at Dallas/Fort Worth International Airport, Texas on August 2, 1985.
A-82-118	FAA	9/26/86	Amend FAA-approved flight manuals to prescribe minimum airspeeds and flight precautions during flight in icing conditions.
R-75-6	Metro-North Commuter RR	8/29/86	Equip all rail lines with a system that will control the speed of the train in compliance with signals when an engineer fails to do so.
R-75-7	do	do	Establish procedures to require trains to stop at stop-and-proceed signals.
R-76-48	do	do	Change the emergency release mechansism for the side doors on the type of cars involved in this accident.
R-76-49	do	do	Provide means for emergency aid personnel to open the doors from the outside when electrical power is lost.
M-86-101	National Assoc. of State Boating Law Admin.	9/8/86	Expedite the revision of the Boating Accident Report Form and include entries that assess PFD performance.
P-86-15	RSPA	9/18/86	Amend Final Order CPF No. 3541-H to Williams Pipe Line Company.
P-76-10	RSPA	9/22/86	Amend CFR 192 to define more realistically an operator's responsibility for gas piping inside buildings.

Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Officer.

October 1, 1986.

[FR Doc. 86-22748 Filed 10-7-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Under Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission—new, revision, or extension: New.

2. The title of the information collection: Simulation Facility Certification.

3. The form number if applicable: NRC Form 474.

4. How often the collection is required: One time only. (A "recertification" on the same form will be required only in the event that certification has been lost.).

5. Who will be required or asked to report: Licensed power facilities.

6. An estimate of the number of responses: 16 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1920 annually.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: Submittal of NRC Form 474 will be mandatory for all licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests.

ADDRESS: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 396–7340.

NRC Clearance Office is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–22842 Filed 10–7–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 9–11, 1986, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on September 25, 1986. The meeting schedule description is revised to reflect a possible closed session during a portion of the meeting on Saturday.

Saturday, October 11, 1986

1:30 P.M.–3:00 P.M.: ACRS Subcommittee Activities (Open/Closed).

The members will hear and discuss reports of cognizant ACRS subcommittees regarding activities related to safety matters including proposed IDCO methodology for evaluation of individual nuclear power plants, Westinghouse Electric Corporation Advanced PWR, safety-related changes in the Paluel Nuclear Plant, containment performance design objectives, and scram system reliability.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the Westinghouse Advanced PWR.

Dated: October 2, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–22843 Filed 10–7–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275, 50–323]

Pacific Gas & Electric Co.; (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Registration, has issued a decision concerning a Petition dated July 27, 1984 filed by Mr. Thomas Devine of the Government Accountability Project on behalf of Messrs. Timothy J. O'Nell and James L. McDermott. Further documents in support of the Petition were dated July 29, July 30, and July 31, 1984. The Petition was amended on November 16, 1984 and supplemented on March 14, 1985. The Petitioner requested the Commission to defer further licensing decisions on the Diablo Canyon Nuclear Power Plant, Units 1 and 2 until certain actions had been taken, related to alleged harassment at the plant site, organizational freedom for quality assurance inspectors, and retraining of all project personnel on quality assistance and employee protection requirements. The request was referred by the Commission to the Director, Office of Nuclear Reactor Regulation for treatment pursuant to 10 CFR 2.206 of the Commission's regulations and an Interim Director's Decision (DD–84–19) was issued on August 20, 1984 by the Director denying certain aspects of the Petition's request. A Final Directior's Decision has been issued on September 30, 1986 by the Director denying the Petitioner's request in its entirety. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–86–12), which is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Local Public Document Room at the Robert F. Kennedy Library, California Polytechnic State University, San Luis Obispo, California 93407.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As approved in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the decision within that time.

Dated at Bethesda, Maryland, this 30th day of September 1986.

For The Nuclear Regulatory Commission.

Richard H. Vollmer,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86–22841 Filed 10–7–86; 8:45 am]

BILILING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC, the licensee) is the holder of Facility Operating License No. DPR–3 which authorizes operation of the Yankee Nuclear Power Station (the facility) at a steady-state power level not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Rowe, Massachusetts. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G, is the subject of the licensee's exemption requests. Portions of III.G applicable to these requests are presented below.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Inside noninerted containments one of the fire protection means specified above or one of the following fire protection means shall be provided:

d. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no

intervening combustibles or fire hazards.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system also shall be installed in the area, room, or zone under consideration.

III

By letter dated December 28, 1984, the licensee requested thirteen exemptions from section III.G of Appendix R in six areas of the plant. By letter dated April 30, 1985, the licensee withdrew exemption requests 1, 2, 3, and 6 and added exemption requests 14 through 17. By letter dated November 7, 1985, the licensee withdrew exemption requests, 4, 5, 11, 15, 16, and 17, leaving seven requests in four plant areas (exemption requests 7, 8, 9, 10, 12, 13, 14).

By letter dated August 22, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764). The licensee stated that the existing fire protection features and the modifications that have been implemented at the Yankee Nuclear Power Station accomplish the underlying purpose of the rule. For each requested exemption, the licensee discussed why compliance with either section III.G.2 or III.G.3 of Appendix R in the particular circumstances is not necessary to achieve the underlying purpose of the rule. For example, when less than 20 feet separation between redundant trains exists, the licensee notes that the combustible loading in the vicinity is too small to cause damage to both trains. Similarly, for locations without fixed fire detection and suppression throughout the building, the licensee states that no significant combustibles or hot shutdown equipment are present in those areas so a fire cannot spread and cause damage. Thus, implementing further modifications to provide additional fire suppression, fire detection and fire barriers or greater horizonal separation would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources. The staff, therefore, conclude that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

The acceptability of each exemption request is addressed below. Further details are contained in the staff's related Safety Evaluation. NRR and contractor fire protection engineers visited the site to walk down the fire protection modifications made by the licensee to comply with Appendix R and review the above areas where exemptions from Appendix R had been requested.

Exemption Requested for Primary Auxiliary Building (Section III.G.3)

An exemption was requested from section III.G.3 to the extent that it requires installation of fire detection and fixed fire suppression throughout an area requiring alternative shutdown capability.

Evaluation

The primary auxiliary building (PAB) is an L-shaped building located south of the vapor container and the safety injection accumulator room and east of the diesel generator building (DGB) and the gas storage building. The walls between the PAB and the DGB (including the door) and the accumulator room wall that abuts the PAB provide a 3-hour barrier between the PAB and the DGB.

Safe shutdown systems in the PAB include the two motor-driven emergency feedwater pumps; the three charging pumps; and the associated valves for each. Both motor-driven emergency feedwater pumps are located on the west side of the PAB, along with the component cooling water pumps and several other systems. A steam-driven emergency feedwater pump which is located in the turbine building provides the redundant train for the motor-driven pumps. Each charging pump is located in a separate cubicle on the east side of the PAB. The safety injection pumps in the DGB provide a redundant shutdown train for the charging pumps.

The concern was that without fire detection and suppression in the PAB, a fire might spread to the DGB and affect the alternate shutdown capability.

Because of the light fuel load in adjacent portions of the PAB and DGB, the staff does not expect a fire of significant magnitude or duration to occur. The limited intervening combustibles in the PAB do not provide a path for the spread of fire between redundant charging pumps because the cables are either mineral-insulated or routed in conduit, and because the pumps are in pits in separate cubicles.

Should a fire occur in one of the charging pump cubicles, it should not spread because the pumps are in pits. A fire would be detected by installed fire detectors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will not spread to the safety injection pumps in the DGB because the fire ratings of barriers and of doors between the PAB and DGB (including the safety injection accumulator room) exceed the estimated fire severity.

Because of the light fuel load in the PAB, there is reasonable assurance that a fire in the PAB will not result in the loss of safe shutdown capability. Therefore, the staff finds installation of fixed fire suppression and fire detection throughout the PAB would not significantly improve the level of fire protection.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemption Requested for the Diesel Generator Building (Section III.G.2.c)

An exemption was requested from section III.G.2.c to the extent that it requires enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating.

Evaluation

The diesel generator building (DGB) is an L-shaped building located south of the vapor container and attached to the PAB. The three diesel generator rooms in the DGB are separated from each other and from the rest of the DGB by 8-inch concrete block walls (estimated 3-hour fire resistance). Doorways between diesel generator rooms are protected with 3-hour fire rated doors; doorways between the diesel generator rooms and the rest of the building are protected by 1½-hour fire rated doors. The south portion of the DGB is not subdivided except that below grade Manhole No. 3, which is located in the southeast portion of the DGB, is provided with a ½-inch thick steel plate at floor level and a ⅜-inch thick steel manhole cover approximately one foot below floor level.

Safe shutdown equipment in the DGB includes three diesel generators, the high and low pressure safety injection pumps (three of each), associated cables and switchgear including containment isolation system (CIS) Train A power and control cables, and CIS Train B power cables (which are routed through Manhole No. 3 to the PAB).

Dedicated shutdown capability is provided for the safe shutdown equipment in the DGB and Manhole No. 3 by the safe shutdown system (SSS)

located in other plant areas, except for CIS Train B power cables in Manhole No. 3 (CIS Train A is in the DGB). The requirement to have a 1-hour barrier between redundant trains in Manhole No. 3 and in the DGB is the subject of this exemption request.

A concern existed in that the lack of 1-hour fire rated barrier between Manhole No. 3 and the remainder of the DGB would provide a path for the spread of fire between associated circuits. The CIS is needed to isolate the solenoid-controlled air-operated valve in the bleed line. The concern was that a fire affecting both trains of the CIS might cause this valve to inadvertently reopen.

The diesel generator rooms are separated from the best of the DGB by rated fire barriers, and are provided with automatic detection and manual fixed fire suppression systems. The fire detection systems would alert the plant fire brigade to a fire in one of these rooms. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it is not expected to spread beyond the fire rated barriers of the diesel generator room in which it starts. In the unlikely event that it does spread into the DGB, the CIS Train B Power cables in Manhole No. 3 should be adequately protected by their location and by the barriers between the manhole and the room. Because of the light fuel load in the south portion of the DGB, the staff does not expect a fire of significant duration or magnitude to occur. The generally limited combustible contents of this zone do not provide a path for the spread of fire to or from Manhole No. 3; there are no intervening combustibles.

Should a fire start outside Manhole No. 3, it will be detected by the installed fire detectors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will not spread to Manhole No. 3 because of the latter's location below the fire and because the two steel plates separated by over one foot provide an effective fire barrier in this situation. Diesel fuel oil will not spread to the manhole because a spill will be confined by the splash shield and curb.

Should a fire start in Manhole No. 3, it will be detected by installed fire detectors which will alert the plant fire bridge and actuate the total flooding carbon dioxide extinguishing system. If the extinguishing system fails to operate properly, the fire brigade will extinguish the fire. The fire is not expected to continue because of the limited combustible loading in the manhole and the ease with which a fire in such a confined space can be extinguished.

Dedicated shutdown capability is provided in the event of a fire in the DGB or in Manhole No. 3. The associated circuit valve of concern requires air to reopen; thus, removal of the supply of air is a backup to the redundant trains of CIS. One of the immediate operator actions as part of using the SSS is to bleed off the air system in the turbine building. This would be accomplished within 30 minutes. The staff believes at least 30 minutes would be available to complete this action, considering the fire detection and suppression capabilities in the DGB and in Manhole No. 3 as discussed above.

Despite the presence of a non-standard fire barrier between Manhole No. 3 and the remainder of the DGB, a fire in either location will not result in the loss of safe shutdown capability. Therefore, the staff finds that providing a 1-hour rated fire barrier over the access cover to Manhole No. 3 would not significantly increase the level of fire protection in this fire area.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemptions Requested for the Vapor Container (Section III.G.2.d)

Exemptions were requested from section III.G.2.d to the extent that it requires the separation of cables and equipment and associated non-safety circuits of redundant trains in containment by a horizontal distance of more than 20 feet of intervening combustibles for fire hazards. Exemptions were requested for:

1. The separation between the electrical blisters containing the power cables to the pressurizer solenoid-operated relief valve PR-SOV-90 and its motor-operated block valve PR-MOV-512.

2. The separation between the electrical cables and the actuators for valves PR-SOV-90 and PR-MOV-512 in the pressurizer cubicle.

3. The separation between the electrical cables and transmitters for both pressurizer level instrumentation channels in the pressurizer cubicle.

Evaluation

The vapor container (VC) surrounds the reactor vessel, steam generators, and associated equipment, and encloses all pressurized parts of the main coolant system. It is a freestanding structure, which abuts no other building and is connected by a concrete pipe tunnel to the PAB and by the spend fuel chute to the spent fuel building.

A concern existed in that the lack of 20 feet of separation free of intervening combustibles between redundant circuits of the pressurizer valves and of the pressurizer level transmitters could provide a path for the spread of fire which could result in a loss of safe shutdown capability.

PR-SOV-90 is normally closed and fails closed on loss of power. A hot short to the power cable for its solenoid actuator could, however, cause the valve to open. The block valve, PR-MOV-512 is in series in the piping with PR-SOV-90. This valve is manually closed to isolate the line should PR-SOV-90 fail open. A hot short of the solenoid for PR-SOV-90 causing the valve to open and damage to the cable for the block valve would result in a small loss-of-coolant accident. A fire in the VC would not present successful operation of the emergency core cooling systems relied upon to mitigate this event.

The power cables to PR-SOV-90 and PR-MOV-512 enter the VC through blisters. The cables to these two valves enter containment through separate blisters separated by a horizontal distance of approximately 12 feet. The 12-foot horizontal area between these two blisters is completely empty.

From the blisters, the conduit are routed away from each other so that adequate separation is maintained until the conduit approaches the pressurizer cubicle. The licensee has rerouted the conduit containing the PR-SOV-90 power cable to provide this separation. Inside the top of the pressurizer cubicle, the two valves are in the same pipe line where 20-foot separation is not possible.

Two channels of pressurizer level indication are provided. If both channels of level indication were damaged by a single fire, the operators would control primary water addition based on primary pressure indication. Multiple channels of primary pressure indication are available and would not be affected by a fire in the pressurizer cubicle.

The pressurizer level transmitters (PR-LT-705 and PR-LT-8) and cables are separated by approximately 4 feet in the bottom of the pressurizer cubicle. The conduit routing provides up to 10 feet of separation inside this area. The only combustible materials in this area are the signal cable to each of these level transmitters, and the power cables to the pressurizer motor-operated drain valve. All of this cable is in conduit and

is, therefore, not considered to be an invervening combustible, with the exception of the last few feet at the transmitters and motor operator. This area is accessible only from a 40-foot ladder from the top of the pressurizer cubicle, or a 10-foot ladder from the bottom of the loop area. Thus, transient combustible materials are not likely to be brought into this area.

Because of the light combustible load in the VC, the staff does not expect a fire of significant duration or magnitude to occur. The only significant intervening combustibles are the control rod drive and position indication cables which are routed in a cable tray from the top of the reactor head up and out of the reactor cavity onto the charging floor. This cable tray runs above the neutron source range detector signal cables and is not near any other safe shutdown system of concern. Should a fire occur in the cable tray, it will be detected by the installed linear thermal detector which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. In the staff's judgment, at no time will redundant safe shutdown systems be damaged by this fire.

Should a fire occur elsewhere in the VC, it is not expected to cause any damage to the redundant safe shutdown systems because of the light combustible load in their locations. The cables are run in conduit or are mineral insulated and, therefore, present an insignificant fire hazard to their redundant countereparts. Horizontal separation distances between redundant cables are generally ten feet or more, and instrumentation is separated by at least four feet.

In spite of the separation distances of as little as four feet, a fire in any location in the VC will not result in the loss of safe shutdown capability because of the absence of intervening combustibles.

Therefore, the staff finds that providing a 20-foot separation free of intervening combustibles would not significantly improve the level of fire protection in the VC.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection combined with the modifications made by the licensee provide a level of fire protection equivalent to the technical requirements of Appexdix R. Therefore, the exemptions are hereby granted.

Exemption Requested for the Turbine Building (Section III.G.3)

An exemption was requested from section III.G.3 to the extent that it requires the installation of fire detection and fixed fire suppression systems in an area for which an alternative or dedicated shutdown capability is provided.

Evaluation

The turbine building is a rectangular structure with three operating levels. It abuts the Service Building on the east wall and an office on the northwest corner. The ground level includes the heating boiler room, lube oil room and water treatment room. The mezzanine level is comprised of the enclosed switchgear room, the ventilating fan room and an open area. The operating floor level consists of the enclosed control room an open area.

Safe shutdown systems in the turbine building include power, control, and instrument indication for the emergency power system, charging and emergency feedwater systems, and secondary systems. Portions of these and other safe shutdown systems are also located in the main control room, switchgear room, and cable spreading room. No safe shutdown systems are located in the water treatment room or on the operating level of the turbine building.

A concern existed in which the lack of fire detection and fixed fire suppression systems in the water treatment room and on the operating level of the turbine building could permit a fire to cause the loss of safe shutdown capability.

The water treatment room has a light combustible load and is separated from the rest of the turbine building by a minimum 8-inch concrete block wall and nonrated doors. In addition, there is no safe shutdown equipment in this room. Because of the light fuel load here, the staff does not expect a fire of significant duration or magnitude to occur. Should a fire occur, it will be detected by plant personnel or by fire detectors or waterflow devices in adjacent areas, which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will cause the loss of safe shutdown capability because dedicated shutdown capability is provided independent of the turbine building.

Because of the light fuel load on the operating level of the turbine building, the staff does not expect a fire of significant duration or magnitude to occur there. Should the fire occur, it will be detected by operating equipment monitors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should a fire continue, it will not cause the loss of safe shutdown capability because there is none on this level. The fire is not expected to affect the main control room because it is separated from the operating level by concrete walls and metal doors.

Despite the lack of fire detection and fixed suppression systems in these locations, a fire will not result in the loss of safe shutdown capability. Therefore, the staff finds that providing fire detection and fixed fire suppression systems in these locations would not significantly increase the level of fire protection.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemption Requested for the Diesel Generator Building (Section III.G.3)

An exemption was requested from the section III.G.3 to the extent that it requires installation of a fixed suppression system in an area, room, or zone for which an alternative or dedicated shutdown system is provided.

Evaluation

The fire protection in the DGB does not comply with the technical requirements of section III.G.3 of Appendix R because a fixed fire suppression system is not installed in an area for which dedicated shutdown capability is provided.

A concern existed in that the lack of a fixed fire suppression system in the DGB could permit a fire to cause the loss of safe shutdown capability.

The diesel generator rooms are separated from the rest of the DGB by rated fire barriers, and are provided with automatic detection and manual fixed fire suppression systems. The fire detection systems would alert the plant fire brigade to a fire in one of these rooms. Upon arrival the fire brigade will extinguish the fire. Should the fire continue, it is not expected to spread beyond the fire-rated barriers of the diesel generator room in which it starts. In the unlikely event that it does spread, the CIS Train B power cables in Manhole No. 3 should be adequately protected by their location and by the barriers between the manhole and the room as discussed previously.

Thus, despite the lack of a fixed fire suppression system in the south portion of the DGB, a fire in this building will

not result in the loss of safe shutdown capability. Therefore, the staff finds that providing a fixed fire suppression system would not significantly increase the level of fire protection in this fire area.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), the requested exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. In addition, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present for those exemption requests in that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50 to the extent discussed in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (January 29, 1986, 51 FR 3708).

The Safety Evaluation dated October 20, 1986, related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts 01301.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, October 2, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22839 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekley Notice; Application and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on September 24, 1986 (51 FR 33938), through September 29, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By November 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: August 25, 1986.

Description of amendments request: The amendment would revise Technical Specifications (TS) Figure 2.1–1, Reactor Core Safety Limit Three Loops in Operation, which assumes a 5% steam generator (SG) tube plugging limit to a 10% tube plugging limit. Also, TS 3.2.2, Equation for Heat Flux Hot Channel Factor, $F_Q(Z)$, Limiting Condition for Operation, would contain new $_Q$ values of 2.32 vice 2.31 and 4.64 vice 4.62. The changes would be consistent with reanalyses performed in accordance with the Westinghouse 1981 ECCS Large Break Evaluation Model with BART and a generic assessment of model changes described in WCAP–9561–P–A, Addendum 3. To date the licensee reports 2.9% of SG tubes plugged on Unit 1 and 3.7% on Unit 2. This action is taken to add margin to the existing 5% SG tube plugging limit without risking any possible startup delays should more SG tubes require plugging during the October 1986 outage on Unit 1.

Basis for proposed no significant hazards consideration determination: To support the requested changes, the licensee provided an evaluation of the significant hazards consideration per 10 CFR 50.92. The licensee's analysis is restated as follows:

(1) The proposed changes will not increase the probability or consequences of an accident previously evaluated because the revised ECCS analysis provided in Attachment 3, which was performed to support these changes, has demonstrated that the acceptance criteria for 10 CFR 50.46 have been met. The proposed changes have also been demonstrated to have no impact on the non-LOCA DNB transients or RCS structural integrity. Therefore, the probability or consequences of an accident previously evaluated will not be increased.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated because both changes consist of changes to assumptions in previously evaluated accidents. Additionally, the increase in steam generator tube plugging has been evaluated for impact on RCS average temperature, thermal design flow and secondary side pressure and determined to have no impact on current plant operating limits for these parameters. Furthermore, the increase in the steam generator tube plugging limit will have no effect on RCS structural integrity. Thus, these proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes will not involve a reduction in a margin of safety because RCS structural integrity is maintained and the revised ECCS analysis has demonstrated the requirements of 10 CFR 50.46 are met. Additionally, the calculated peak clad temperature from this revised analysis is even less than the existing analysis and provides additional margin to the limit of 2200°F. Therefore, these proposed changes will not involve a reduction in a margin of safety.

On the basis of the NRC staff's preliminary review of the licensee's analysis, we agree that the action is a no significant hazards consideration. The Commission examples (51 FR 7751) of actions not likely to involve a significant hazards consideration include example "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method," which seems to fit this proposed change. The proposed change includes an analysis assuming the new 10% SG tube plugging limit. The analysis indicates that peak clad fuel temperatures would remain within the allowable limits for the large break LOCA analysis of 10 CFR Part 50, Appendix K. Further, the

accident analysis indicates that the Standard Review Plan criteria of section 15.6.5 would be met. The non-LOCA transients will have no impact on DNB since the 10% SG tube plugging will not decrease the coolant flow below the thermal design flow. The safety margin remains within peak clad temperature limits and is probably reduced due to the use of the BART code methodology. It is expected that the NRC staff safety evaluation will agree with the licensee's conclusions. Therefore, we propose to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: Ernest L. Blake, Esquire, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 10, 1986.

Description of amendment request: The amendment would:

(a) permit operation of Arkansas Nuclear One, Unit 1 (ANO–1) for Cycle 8 in accordance with the licensee's application for amendment dated September 10, 1986. The design cycle length would be 425 effective full power days (EFPD). The amendment would change Figure 3.2–1 to provide acceptable boron concentration levels slightly greater than current levels in order to assure cold shutdown capability required for Cycle 8 operation, change Figure 3.5.2–5 to provide acceptable maximum linear heat rates such that the maximum cladding temperature will not exceed 10 CFR 50, Appendix K Final Acceptance Criteria for Cycle 8 operation, change Figures 3.5.2–1(A–D), 3.5.2–2(A–D), and 3.5.2–3(A–D) to provide acceptable rod positions versus power level to ensure shutdown margin requirements of Specification 3.5.2.1 and power peaking criteria are met for Cycle 8 operation, change Figures 3.5.2–6(A–D) to provide acceptable Axial Power Shaping Rod (APSR) positions at any given power level for Cycle 8 operation, change Figures 3.5.2–4(A–D) to provide acceptable operational power imbalance setpoints at any given power level for Cycle 8 operation, and change Specifications 3.5.2.4 and 3.5.2.5 to remove the 92% full power hold requirement for equilibrium xenon.

(b) change Specification 4.7.1.1 to revise the acceptable insertion time for a tripped control rod from 1.46 seconds to the original 1.66 seconds. A penalty of 0.20 seconds was added to the tripped control rod acceptable insertion time criteria to offset a potential rod bow effect from irradiation growth of the fuel rods because bowing of the fuel rods may interfere with the insertion rate of a tripped control rod. The tripped control rod insertion time is measured during a refueling outage prior to restart, and the penalty was added to insure that even if rod bowing occurred during the operating cycle, the control rods would still insert quickly enough to maintain the departure from nucleate boiling ratio (DNBR) safety margins. In support of the increase in the acceptable control rod trip insertion time, the licensee referenced the Babcock and Wilcox (B&W) Topical Report BAW–10147P, "Fuel Rod Bowing in Babcock & Wilcox Fuel Designs", dated April, 1981. The NRC Safety Evaluation of BAW–10147P is dated February 15, 1983.

Basis for proposed no significant hazards consideration determination: The proposed changes have been reviewed against each of the criteria in 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

With regard to (1) above for Item (b), 1.66 seconds is the amount of time assumed for a tripped control rod to insert in the analyses of the Final Safety Analysis Report (FSAR). Thus, the FSAR analyses remain applicable. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not increase the probability or consequences of an accident previously evaluated.

With regard to (2) above for Item (b), there are no changes to the configuration or operability of the control rods or control rod drive system. Also, the function of the control rods will not change. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to (3) above for Item (b), the NRC Safety Evaluation of BAW–10147P concludes that rod bow due to irradiation growth is not a concern in the B&W fuel assemblies utilized by the licensee, thus a rod bow penalty is not necessary. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not reduce a margin of safety.

For Item (a), the Commission has provided guidance concerning the application of the criteria in 10 CFR 50.92 by providing certain Examples (51 FR 7750). One of the examples (iii) of actions involving no significant hazards considerations is for a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The licensee has stated that the proposed amendment would permit operation for Cycle 8 with fuel that is not significantly different from that used in previous cycles. The mechanical design of the fuel assemblies in Cycle 8 is unchanged from Cycle 7. There are no significant changes in the nuclear design of Cycle 8. The thermal-hydraulic design evaluation remains bounded by the FSAR, and the thermal performance of the core during accidents and transients for the Cycle 8 reload remains within the bounds of previously accepted analyses. Also, there have been no significant changes in the acceptance criteria for the Technical Specifications.

On these bases, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Suite 700, Washington, DC 20036.

NRC Project Director: John F. Stolz.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 23, 1985, as revised September 15, 1986.

Description of amendment request: By letter dated December 23, 1985, the

licensee proposed an amendment to change the Technical Specifications relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The proposed amendment was previously noticed on February 12, 1986 (51 FR 5271). The original request has now been revised by substituting the title "Chief Operating Officer" for "Senior Vice-President, Nuclear." This change is being made to recognize that the position of Senior Vice-President, Nuclear has been eliminated and its authority and responsibilities have been transferred to a new position of higher authority, the Chief Operating Officer.

Basis for proposed no significant hazards consideration determination: This additional change to the Technical Specifications is administrative and does not physically affect plant related systems. Therefore, this change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Based on this finding, the staff has made an initial determination that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 29, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. The proposed change to TS Section 4.6.3.2 would permit the operability of primary containment isolation valves listed in TS Table 3.6.3–1 to be verified while the reactor is in operational conditions other than cold shutdown or refueling.

Technical Specification 4.6.3.2 requires that each primary containment isolation valve listed in TS Table 3.6.3–1 be demonstrated operable during COLD SHUTDOWN or REFUELING at least once every 18 months. This operability test should verify that the valve actuates to the appropriate position upon receipt of a test signal. This requirement limits the operational flexibility of the plant for those valves capable of being tested during power operation. The Brunswick Updated Final Safety Analysis Report (FSAR), paragraph 7.3.1.1.9, states the following:

> The primary containment isolation and NSSS Shutoff System is testable during reactor operation. Isolation valves can be tested to assure that they are capable of closing by operating manual switches in the Control Room and observing the position lights and any associated process effects.

The proposed revision to the Brunswick Technical Specifications would delete the phrase "during COLD SHUTDOWN or REFUELING" from Surveillance Requirement 4.6.3.2. This revision would allow primary containment isolation valves to be tested and demonstrated operable where such testing is feasible during power operation. The testing will normally be done in conjunction with logic system functional tests for the instrumentation associated with a given isolation valve.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. As noted in the Brunswick Updated FSAR, the Brunswick primary containment isolation system (including isolation valves) was designed to be testable during reactor operation. Therefore, the level of assurance of valve operability is not affected by conducting the testing during plant operation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the design of any safety systems. In addition, the performance of any safety functions is not affected since the surveillance testing is intended to actuate the containment isolation valves to their appropriate isolation position. Because the isolation valves are designed to be testable during plant operation, no new plant transients will be introduced by the proposed change.

3. The proposed amendment does not involve a significant decrease in a margin of safety. The testing of containment isolation valves with the unit in operation would allow the test conditions to more closely reflect the operating conditions under which the isolation valves are expected to perform their safety function. This can be especially important where thermal expansion and system pressures can affect valve performance. Therefore, the margin of safety may actually be increased if certain containment isolation valves are tested with the unit in operation.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket No. STN–50–454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: August 13, 1986.

Description of amendment request: The amendment would revise Technical Specification Section 3/4.7.5 on pages 3/4 7–13 and 3/4 7–14 to replace "86% of total volume" with "50%" for the water level in the ultimate heat sink (UHS) cooling tower basis.

The minimum water volume in the basin is not being changed by this amendment. The licensee intends to replace the existing instrument with an instrument with greater range; therefore, 86% on the old instrument corresponds exactly with 50% on the new instrument.

The licensee wants to use an instrument with greater range so that the physical water level in the basin can be increased and still be read on the instrument. The increased water level, which is above the 100% reading of the existing instrument, is desirable because it provides more margin to the level at which the essential service water diesel driven pumps receive an auto start signal.

It is the staff's intention to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. In accordance with the criteria of 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment does not alter the actual minimum water level of the Ultimate Heat Sink (UHS) cooling tower basin. The amendment merely revises the instrument indication in the control room for 873.75 feet Mean Sea Level (MSL) to read 50%. Changing the instrument indication to a different reference point does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(a) the proposed amendment does not allow any new equipment or modes of operation which could initiate a new or different kind of accident from any previously evaluated because the actual minimum volume of water in the UHS cooling towers is not being changed. The change pertains only to instrumentation indication; therefore the possibility is unaltered.

(b) this is an administrative change which would merely change the control room indication for the UHS cooling towers to 50% when at 873.75 feet MSL. This change will allow operation above the minimum level without a constant high level alarm.

(3) Involve a significant reduction in the margin of safety, because there are no hardware changes associated with this proposed license amendment, nor in the manner that the UHS cooling towers are being operated. For these reasons, there is no reduction in the margin of safety as a result of the proposed license amendment.

Based on the preceding assessment, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln and Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket No. STN–50–454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: August 27, 1986.

Description of amendment request: The amendment would revise Technical Specification section 3/4.8.2.1 on page 3/4 8–10; section 3/4.8.2.2 on page 3/4 8–13; and add a new section, section 3/4.8.2.1.3 on a new page, page 3/4 8–11a. These changes address operation of the D.C. crossties between Units 1 and 2 at Byron Station for two situations: (1) With both units operating and one battery charger failed, and (2) with one operating and the other unit shutdown with a battery and its associated battery charges out of service.

The staff intends to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment controls the use of the D.C. crosstie between opposite unit D.C. buses. Accidents previously evaluated assume a certain load profile on a D.C. bus. The D.C. bus loading, when using the crosstie, will be restricted so the capacity of the operating unit's battery will not be exceeded in the event of a single failure and simultaneous accident and loss of offsite power conditions. A single failure and simultaneous accident and loss of offsite power are the conditions assumed for a D.C. bus in previously evaluated accidents. As a result, the probability or consequences of accidents previously evaluated are not changed by this proposed amendment.

The only new or different kind of accident which could be created by this proposed amendment would involve an interaction between the two D.C. buses which are crosstied. However, a breaker exists on either side of the crosstie which would isolate any potential short circuit from either unit. These breakers are coordinated with the D.C. bus main breaker to assure the crosstie will isolate from the affected D.C. bus before the battery would be isolated. All of these breakers are class 1E. For these reasons, a new or different kind of accident will not be created from this proposed amendment.

This proposed amendment will allow use of some margin in the capacity of the batteries which was allocated for future D.C. loads. However, no design margin in the batteries (i.e., aging or temperature correction factors) has been affected by this proposed amendment. Accordingly, no margin of safety has been reduced.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket No. STN 50–454, Bryon Station, Unit 1 Ogle County, Illinois

Date of application for amendment: September 10, 1986.

Description of amendment request: The amendment would revise several areas of Section 6.0, Administrative Controls, of the Technical Specifications. The changes have been requested to reflect a recent reorganization of the Byron Station management.

The staff intends to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. In accordance with the

criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated because the proposed amendment merely revises the Commonwealth Edison on-site and off-site organizational structure as found in the Byron Station Technical Specifications. This has no impact on plant design or operations; hence, the probability or consequences of previously evaluated accidents are unaltered.

(2) Create the possibility of a new or different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operation in Byron Station that could create the possibility of a new or different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln and Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket Nos. 50–237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: January 20, 1986 as supplemented by a letter dated July 29, 1986.

Description of amendment request: The amendments proposed in the January 20, 1986 submittal primarily involved typographical errors, changes in nomenclature, sentence structure and references with the exception of a change for Dresden Unit 3 to allow post-maintenance testing of control rod drives in the refuel mode with low pressure cooling systems inoperable. This latter provision was approved for Dresden Unit 2 in Amendment 6 to DPR–19.

The July 29, 1986 submittal proposes additional changes of a similar nature including revisions to certain tables to reflect the results of minor appropriate plant modifications recently implemented.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration in its submittals as follows:

Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Dresden Units 2 and 3 in accordance with the proposed amendments will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The miscellaneous editorial, grammatical, reference changes are administrative in nature and do not allow any new operating practices or changes in equipment which could impact the probability or consequences of an accident.

(b) The provision to allow control rod drive testing with Low Pressure Cooling Systems inoperable includes restrictions that the reactor be in the REFUEL mode (following achievement of cold shutdown) and specifically prohibit any simultaneous work which has the potential to drain the reactor vessel. The latter provision ensures that the probability of a loss of coolant accident is not increased by this amendment. In addition, REFUEL mode interlocks prevent the withdrawal of more than one control rod thereby protecting against the possibility of making the reactor critical.

(c) The changes regarding the CRD return line valves reflect actions taken by Commonwealth Edison in response to NRC recommendations in NUREG–0619. As a result [of] thermal stress cracking in these lines, these lines had previously been isolated and on Unit 3, the line was recently removed. The proposed changes modify the Technical Specifications to reflect the current plant configuration. The CRD return lines have either been permanently isolated (Unit 3) or have the isolation valves closed (Unit 2) to ensure primary containment integrity.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because

(a) The administrative changes do not allow any new equipment or operating procedures which could initiate or impact the scenario of an accident or operational event.

(b) Post maintenance testing of control rod drives is not a new activity and therefore does not introduce any new concerns regarding the initiation or progression of a transient event. This provision does not involve any new equipment, changes to equipment, or significant changes to operating procedures and therefore cannot initiate any new events beyond those previously evaluated.

(c) The changes regarding the CRD line valves are conservative in that they reflect the removal or isolation of this line in response to NRC requirements.

(3) Involve a significant reduction in the margin of safety because the changes are either administrative and have no direct affect on operating limits or equipment availability or contain specific provisions to assure the margin of safety is not compromised as in the case of the control rod drive testing provision and the CRD return line valves (where removal/isolation of these lines provides additional protection against the thermal stress cracking concern).

In consideration of the above, Commonwealth Edison has determined that the proposed amendments do not represent a significant hazards consideration and request their approval under the provisions of 10 CFR 50.91(a)(4).

The staff has reviewed the licensee's no significant hazards consideration determination and the content of the licensee's submittals and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 4, 1986.

Description of amendment request: The proposed license amendment would amend Section 4.10.C of the technical specifications to incorporate inservice inspection surveillance requirements for the reactor coolant pump (RCP) flywheels consistent with the guidance found in Regulatory Guide 1.14, Revision 1. In particular, this proposed amendment would increase the frequency of pump flywheel inspections and ensure the examination of each RCP flywheel on a regular interval (approximately 3 years). The present inspection frequency requires only one RCP flywheel inservice inspection every second outage.

Basis for proposed no significant hazards consideration determination: The present technical specification requires that only one RCP flywheel be inspected every second refueling outage. At this frequency, it would take six (6) refueling outages (approximately 7 years) to complete the inspection of all 4 RCP flywheels and any individual RCP flywheel would be inspected every eight (8) refueling outages (approximately 9 years).

The proposed license amendment increases the inspection frequency such that each RCP flywheel will be inspected during an interval not to exceed three (3) years. In addition, the proposed change would require each RCP flywheel to receive an ultrasonic volumetric examination of the higher stress areas, i.e., bore and keyway areas, in lieu of the present requirement to do a visual and volumetric examination of only one flywheel every other outage.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986) of license changes involving no significant hazards consideration. The staff has reviewed the proposed change and concludes that it falls within the envelope of example (ii) in that the change would constitute an additional limitation, restriction or control not included in the current technical specifications. As described above, the proposed non-destructive testing requirements are in accordance with existing regulatory criteria not now required by the plant technical specifications.

Based on the above, the staff proposes to find that the requested license amendment involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 18, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications to include provisions for automatic actuation of the reactor trip breakers shunt trip attachment consistent with Item 4.3 of Generic Letter 83–28 concerning the generic implication of the Salem Anticipated Transient Without Scram (ATWS) event. The proposed changes are responsive to Generic Letter 85–09, entitled "Technical Specifications for Generic Letter 83–28, Item 4.3" and the June 22, 1984 Safety Evaluation for a modification to Indian Point Unit 2 to provide automatic actuation of the reactor trip breakers shunt trip attachment consistent with Item 4.3 of Generic Letter 83–28. The proposed amendment would also correct two typographical errors contained in the current Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (51 FR 7155). One of these examples (ii) of actions not likely to involve a significant hazards consideration relates to additional restrictions or controls not presently included in the Technical Specifications. Consistent with this example, the proposed changes with respect to reactor trip breakers provide new explicit LCO's and testing requirements consistent with the modified shunt trip, design, not previously included in the Technical Specifications.

The proposed changes correcting the typographical error are consistent with example (i) of the Commission's guidance. Example (i) relates to a purely administrative change to the technical specifications; for example a change to achieve consistency throughout the technical specifications; correction of an error, or a change in nomenclature. Based on the above the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Steven A. Varga.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 15, 1985 as supplemented August 7, 1985, November 8, 1985, March 7, 1986, April 14, 1986 and September 18, 1986.

Description of amendment request: The proposed amendments would revise: (1) Surveillance Requirement 4.6.5.3.Ib. to reduce the surveillance frequency for testing the ice condensor lower inlet doors from at least once per 3 months during the first year after the ice bed is initially fully-loaded and at least once per 6 months thereafter to at least once per 18 months; (2) Surveillance Requirements 4.6.5.3.Ib.3) and 4.6.5.3.Ib.4) to increase the inlet doors test sample to a least 50% of the doors in lieu of 25% and to ensure that all doors are tested at least once during two test intervals in lieu of four test intervals.

The testing and surveillance required to demonstrate operability of the ice condensor lower inlet doors are time consuming and require a unit shutdown. The licensee stated that scheduling a unit shutdown solely to carry out the testing and surveillance required is not considered appropriate because this surveillance has a limited safety significance due to the high reliability of the doors.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the reduction in the surveillance frequency of the ice condensor lower inlet doors, the increase of the test sample and the change in test intervals would not significantly affect the operability of the doors. The surveillance records at Catawba show that the doors are highly reliable because a design change made to the door seals to prevent the doors from freezing was implemented at Catawba Units 1 and 2 prior to the issuance of their fuel loading licenses. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes would not affect the design and would not introduce new modes of operation of the facility. Finally, it would not (3) involve a significant reduction in a margin of safety because the surveillance records show that the ice condensor lower inlet doors are highly reliable as stated in item (1).

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 9, 1986, as supplemented September 12, 1986.

Description of amendment request: The amendments would permit an exception to the experience requirements for two additional candidates for senior reactor operator (SRO) licenses. The exception is from the requirements stated in Section A.1.a of Enclosure 1 to the Denton letter, dated March 28, 1980, referenced in Technical Specification Section 6.0, "Administrative Controls." The Commission has previously approved a similar exception for six candidates (51 FR 5282). The licensee's letter of September 12, 1986, provided additional information in response to NRC staff letter issued about August 25, 1986, undated.

Basis for proposed no significant hazards consideration determination: The Technical Specifications Section 6.3 "Unit Staff Qualifications" and Section 6.4 "Training" require, among other things, that the licensee's unit operating staff meet or exceed the requirements in Sections A and C of Enclosure 1 to the Denton letter dated March 28, 1980. Section A of Enclosure 1 requires that an applicant for SRO license shall have a minimum of 4 years of experience as a control room operator (fossil or nuclear). This experience requirement is a prerequisite for taking the SRO examination. However, the principal requirement is that the SRO candidates pass the NRC license examination.

Section A of the Denton letter allows exceptions to the experience requirements for SRO applicants for plants that are not yet licensed because there is no opportunity to obtain such experience on their plants. The proposed change to Technical Specification 6.3.1 is requested for a similar reason in that Catawba Unit 1, which received a fuel loading and precriticality testing license in July 1984, a low power license in December 1984, and a full power license in January 1985, has not been in operation long enough to provide an opportunity for reactor operators to have 4 years of control room operating experience. Likewise, Catawba Unit 2 received a low power license in February 1986 and a full power license in May 1986.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration by application of the standards in 10 CFR 50.92. The Commission's staff has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the two SRO candidates are highly trained at Catawba, each has held a reactor operator license for approximately 2 years and each would be required to pass the SRO license examination; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the SRO candidates are experienced, licensed operators and the amendment does not change the manner in which the plant is to be operated; or (3) involve a significant reduction in a margin of safety because, in addition to the requirement that each candidate pass the NRC examination for an SRO license, each has greater than 8 years of experience on-site at Catawba, during which each has been actively involved in preoperational testing and checkout, startup testing, and operator training. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 19, 1986.

Description of amendment request: Existing Technical Specification (TS) 3.11.1.1 and its referenced Figure 5.1–4, "Site Boundary for Liquid Effluents" define the authorized discharge point for radioactive material released in liquid effluents to unrestricted areas as being only to Lake Norman, an upstream impoundment of the Catawba River. The proposed amendments would modify Figure 5.1–4 to add an additional discharge point from the Conventional Wastewater Basin (CWWB) into the Catawba River. The change would affect only the discharge location, and would not increase existing TS requirements regarding: (1) The quantity of radioactive material which may be contained in or released from the pond, (2) allowable doses to the public from releases to unrestricted areas, and would not decrease existing TS requirements regarding liquid discharge monitoring.

The change would be accomplished by deleting from TS Figure 5.1–4 an existing, obsolete footnote which authorized a one-time discharge from the CWWB to the Catawba River on June 20, 1986, but retaining the existing arrow at the river and its label, "Liquid Waste Discharge Point." (The existing arrow, label, and footnote were added in response to a separate application by the licensee submitted subsequent to the March 19, 1986 request.)

Basis for proposed no significant hazards consideration determination: Chemical wastes from the McGuire Station (e.g., turbine building drains, water treatment system filter backwashes, demineralizer regeneration wastes), which are normally non-radioactive, are routed through the Conventional Waste Water Treatment System (CWWTS) and subjected to physicochemical treatment. The CWWTS includes a Basin of two parallel stream settling ponds with a capacity of about 2 million gallons each. Upon completion of treatment, the discharges from this system are released to the Catawba River downstream of Cowans Ford Dam. Waste containing radioactive material is normally routed to separate Liquid Radwaste Systems (see FSAR Section 11.2) for recycling, processing and discharge to Lake Norman. During operation with primary-to-secondary leakage in steam generators, the waste in the turbine building sumps will become contaminated; long-term operation with such leakage can create large volumes of liquid waste in the turbine building sumps in excess of the processing capacity of the Liquid Radwaste System. If the level of contamination is within limits, the sump contents are routed to the CWWTS.

The quantity of radioactive material contained in each chemical treatment pond, and in each batch of slurry (used power resins) to be transferred to the chemical treatment ponds, is limited consistent with 10 CFR Part 20, Appendix B, Table II by existing TS 3/4.11.1.5. The concentration of radioactive material released in liquid effluents to unrestricted areas is limited

consistent with 10 CFR Part 20, Appendix B, Table II by existing TS 3/4.11.1.1. The dose or dose commitment to a member of the public from radioactive materials in liquid effluents released from each McGuire unit is limited consistent with 10 CFR 50, Appendix I by existing TS 3/4.11.1.2. These TSs (3/4.11.1.1, 3/4.11.1.2, and 3/4.11.1.5) would apply to both the CWWTS and the Lake Norman discharge points. The change would also not decrease the existing monitoring requirements (TS 3.3.3.8 and referenced TS Table 3.3–12) which assure that instantaneous radioactive release rates remain within 10 CFR Part 20, Appendix B limits, and that radioactive liquid effluent monitoring instrumentation remains operable or appropriate compensatory action taken. Rather, the change provides for consistency of TS Figure 5.1–4 with these other existing TSs which assure that such discharges, concentrations and doses are consistent with the Commission's regulations. Therefore, as noted in the licensee's submittal, the change more accurately reflects station design and practice when operating with a primary-to-secondary leak in steam generators.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. One of the examples (i) relates to amendments for a purely administrative change to Technical Specifications. Removal of the obsolete footnote has no safety implication and matches this example. The remainder of the change, which designates the river as a liquid waste discharge point, does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this portion of the change be implemented, it would not involve: (1) A significant increase in the consequences of an accident previously evaluated or (2) a significant reduction in a margin of safety. The change does not increase the radioactive waste produced by or released from the station. The concentrations of radioactivity in the CWWB are maintained low in accordance with existing TS requirements and the potential accidental radioactive releases from the CWWB are bounded by the releases from the postulated design-basis liquid tank failures evaluated by the Commission in the McGuire Safety Evaluation Report, Section 15.3.10, and found to result in acceptable radionuclide concentrations in the Catawba River. This part of the change also would not (3) increase the probability of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. Because the change does not involve any new or novel changes in equipment, design, operating procedures and limits, setpoints, or limiting conditions for operation, it has no effect on accident causal mechanisms.

On the above bases, the Commission proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 27, 1986, as supplemented with additional information on September 29, 1986.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility at the Oconee Nuclear Stations (ONS). The proposed amendments would also delete certain outdated footnotes with the gaseous process and effluent monitoring instrumentation.

In a letter dated June 10, 1985, and supplements, the licensee requested approval under 10 CFR Part 20, § 20.305, to treat or dispose of licensed material by incineration. The incinerator is one major integral component of the new volume reduction radwaste facility.

The licensee will monitor the process exhaust from the volume reduction system as it is mixed with normal facility heat, ventilation and air condition (HVAC) exhaust before release. An isokinetic sampling system is provided to obtain representative exhaust duct air samples for radiological monitoring and analyses. A continuous noble gas activity monitor and sample cartridge for continuous collection of iodine and particulate samples are provided.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). Example (i) of the types of amendments not likely to involve significant hazards considerations is an amendment considered to be a purely administrative change to the TSs; for example, a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature.

One of the proposed changes to the TSs has been determined to contain only administrative changes. The requested changes are required so that the TSs are updated and no longer note obsolete footnotes. Also, some typing format changes have been proposed.

For the other proposed revision to the TSs, i.e., to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility, the Commission has provided guidance concerning the determination of significant hazards considerations by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee states that the amendments constitute operability requirements of monitors and surveillance requirements for the incinerator. Appropriate accident analyses for the incinerator were provided in the June 10, 1985 submittal. The activity release by nuclide and the dose estimated for each of the accident cases analyzed are provided in the June 10, 1985 submittal. The doses calculated were derived with conservative assumptions and were found to be below 10 CFR Part 20 annual dose limits. Therefore, the consequences of these accidents analyzed will not be significantly increased. The proposed changes include additional operability requirements of monitors and surveillance requirements associated with the incinerator. As such, this change is not considered to be an initiator of the accidents analyzed. We agree with the licensee's analysis.

The proposed amendments do not create the possibility of a new or

different kind of accident from any accident previously evaluated because the proposed changes do not involve any physical changes to the plant. These amendments result from the addition of the radwaste facility at ONS. No new or different kind of accident can be created since these amendments only add additional sampling points for surveillance and define the operability requirements for the radwaste facility monitors.

The proposed amendments do not involve a significant reduction in a margin of safety. Operation of the radwaste facility including the incinerator will still be within Appendix I to 10 CFR Part 50 numerical guides for the three unit site, and accordingly the margin of safety is unchanged.

Based on the above, the Commission's staff proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 17, 1986.

Description of amendment request: The proposed amendment would change the expiration date for Facility Operating License No. DPR–72 from September 25, 2008, to December 3, 2016, 40 years from the issuance of the operating license.

Basis for proposed no significant hazards consideration determination: The currently licensed term for the Crystal River Unit No. 3 Nuclear Generating Plant is 40 years commencing with issuance of the Construction Permit (September 25, 1968). Accounting for the time required for plant construction, this represents an effective operating license term of 31 years and 10 months. The licensee's application requests a 40-year operating license term.

The licensee's request for extension of the operating license is in accordance with 10 CFR 50.51 and is based on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated to maximize the inspectability of structures, systems, and equipment. Surveillance and maintenance practices which have been implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of a 40-year design life (32 Effective Full Power Years), and a comprehensive vessel material surveillance program is maintained in accordance with 10 CFR Part 50, Appendix H. Analyses showing compliance with the NRC pressurized thermal shock screening criteria have demonstrated that the expected neutron fluence will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remain qualified and available to perform all safety functions regardless of the overall age of the plant.

The licensee has reviewed the Final Environmental Statement (FES) to determine if its calculations will be materially affected by the proposed extension and has determined that there will be no significant increase in annual risk to the public and that assurances to protect the environment will continue throughout the proposed plant operating life. The ALARA program is expected to offset any tendency for increased occupational exposure due to plant age. In addition, considerable financial benefits to the local population and to the utility's customers would continue to accrue from continued operation of the facility.

The licensee has concluded, and we agree, that the proposed extension will not modify any operating parameters and restrictions except to allow continued operation for a longer period of time. This is consistent with current regulatory practice under the requirements of 10 CFR 50.51. Based on the above, this amendment will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated. No operational restrictions are modified by changing the duration of the license.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

(3) Involve a significant reduction in the margin of safety. Any reduction in the margin of safety will be maintained within acceptable bounds by continued implementation of the referenced ongoing programs (Qualification Maintenance Program, Reactor Vessel Materials Surveillance Program, environmental monitoring, etc.). These programs are designed to assure there would be no significant reduction in the associated margin(s) of safety.

Based upon the above, the Commission proposes to determine that the proposed amendment, which provides for a 40-year operating life for the Crystal River Unit No. 3 Nuclear Generating Plant, involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida – 33733.

NRC Project Director: John F. Stolz.

General Public Utilities Nuclear Corporation Docket No. 50–320, Three Mile Nuclear Station Unit No. 2, Londonderry Township Dauphin County, Pennsylvania

Date of amendments request: August 15, 1986.

Description of amendments request: The proposed change would revise Section 6.3.2 of the Appendix A Technical Specifications by changing the title of the Radiological Controls Director at Three Mile Island Nuclear Generating Station, Unit 2. Section 6.3.2 specifies the qualifications for radiological controls personnel. The change is a change in title only, and there is no change in the required qualifications of the individual filling the position. The change is requested by the licensee to achieve consistency with the corporate organizational structure.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751)

of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to purely administrative changes to the technical specifications and specifically identifies changes in nomenclature. Since the change requested by the licensee's August 15, 1986 submittal fits the example provided and satisfies the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed changes; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the March 1981 Final Programmatic Environmental Impact Statement.

Local Public Document Room Location: State Library, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17105.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William D. Travers.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County Georgia

Date of amendment request: July 18, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to: (1) Delete four primary containment isolation valves (PCIVs) from and add 15 PCIVs to Table 3.6.3–1; (2) add or correct part numbers (valve identification numbers) for 16 valves listed in Table 3.6.3–1; (3) move eight valves from Section B (Manual Isolation Valves) of Table 3.6.3–1 to Section A (Automatic Isolation Valves); (4) move the RPV head spray valve from Section A (Automatic Isolation Valves) of Table 3.6.3–1 to Section C (Other Isolation Valves), and (5) change the valves listed in Table 3.6.3–1 as the inboard and outboard isolation barriers for the fission product monitoring system sample line.

The changes are proposed to: (1) Reflect past design changes in the system and design changes that are proposed to be made during the refueling outage scheduled to begin in September 1986; (2) correct the valve listing to include all PCIVs and to correct previous errors in identification number; and (3) correctly identify the valves as "automatic", "manual" and "other".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves nn significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes expand and correct the listing of valves in Table 3.6.3–1. They will better assure that all the valves that are required to be tested for operability and leak tightness are identified and tested. This should insure the margin of safety provided by the isolation system. These changes are not expected to: (1) Increase the probability or consequnces of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the above, the Commission has determinied that the requested amendment meets the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 16, 1986.

Description of amendment request: The proposed amendment changes the order of preference of instrumentation used to monitor reactor power quadrant tilt. The current Technical Specifications require measuring quadrant tilt using the full incore detector system (FIT). If FIT is not available, then the minimum incore detector system (MIT) is used. If neither FIT or MIT is available, then the out of core detector system (OCT) is to be used. Since the OCT is more accurate than the MIT, the proposed amendment reverses the order of preference of the MIT and the OCT. Thus, under the proposed amendment, if the FIT is not available, the OCT would be used next; and if FIT and OCT were both not available, then MIT would be used.

The proposed amendment also includes changes to allow the withdrawal of axial power shaping rods under end of cycle core conditions. These changes were noticed separately on July 30, 1986 (51 FR 27284) and were approved by Amendment No. 120 issued September 2, 1986.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. Each standard is discussed in turn.

Standard 1—The proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment simply revises the order of preference for selecting the system that shall be used to determine quadrant tilt. It does not change any set point or required system accuracy or surveillance interval. Thus, it does not increase the probability or consequences of any accident previously evaluated.

Standard 2—The proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed in Standard 1, the proposed amendment only revises the order of preference for selecting the equipment used to measure quandrant tilt. It changes no limits. Thus, it does not create the possibility of a new or different kind of accident.

Standard 3—The proposed amendment should not involve a significant reduction in a margin of safety. The proposed amendment changes no limits and thus has no effect on existing margins of safety.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of Amendment request: September 10, 1986.

Description of amendment request: The proposed amendment proposes to change the title "Manager Nuclear Safety" to "Manager Analyses Service" and changes the reporting responsibility of the Independent Safety Engineering Group from the Manager Nuclear Safety to the Chairman of the Nuclear Safety Review Committee.

Basis for proposed no significant hazards consideration determination: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve organizational modifications and enhancements and as such, have no effect on plant equipment or the technical qualifications of plant personnel.

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes do not affect the overall number or qualifications of personnel who operate Wolf Creek Generating Station, nor do they involve any change to installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

The proposed revisions do not involve a significant reduction in a margin of safety. These changes do not involve any changes in overall organizational commitments or individual job responsibilities. Organizational modifications alone do not reduce any margin of safety.

Based on the above analysis the licensee has concluded that the proposed revisions to the Wolf Creek Generating Station Technical Specifications involve no significant hazards considerations. The NRC staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: June 24, 1986.

Description of amendment request: The licensee plans to implement a station modification at the Waterford 3 Steam Electric Station during the first refueling outage to provide the plant operators with the capability of bypassing the high steam generator level reactor trip. The proposed change to Technical Specification 3.3.1 will allow the operations staff to bypass the trip while in Modes 1 and 2. As currently noted in Section 2.2.1 of the Technical Specification Bases, the Steam Generator Level—High trip is provided to protect the turbine from excessive moisture carry-over. Because the turbine is automatically tripped when the reactor is tripped, the Steam Generator Level-High trip provides a reliable means for providing protection to the turbine from excessive moisture carry-over. The trip's set point does not correspond to a Technical Specification Safety Limit and no credit is taken in the safety analyses for operation of this trip. Its functional capability at the specified trip setting enhances the overall reliability of the Reactor Protection System.

Additionally, the high steam generator level trip is described in Section 7.2.1.1.1.10 of the Waterford 3 FSAR. It is an equipment protective trip only and, therefore, does not fall within the scope of IEEE 279–1971, "Criteria for Protection Systems for Nuclear Generating Stations". However, in order to enhance the overall reliability of the Reactor Protection System (RPS) and, as stated in the FSAR, "to preserve uniformity of function and design, the high steam generator level trip function meets the design bases" for other RPS components, including IEEE 279–71.

The proposed change will not affect the design or testing of the non-safety related high steam generator level trip function but will only provide the option to bypass the function in Modes 1 and 2.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes that this specific change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(a) The proposed change allows bypassing the non-safety related steam generator high level trip. This trip is not credited in the Waterford 3 safety analyses nor does the trip setpoint correspond to a Technical Specification Safety Limit. The design, testing and reliability of the RPS is unaffected by the proposed change. Therefore the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(b) The most adverse consequence of bypassing the high steam generator level trip is the potential for moisture carry over to the turbine and subsequent damage. This, however, is not a safety concern. The main steam line piping to the main steam isolation valves is designed to carry a water loading. Even should the main steam line piping be postulated to rupture due to the water loading, the resulting event is bounded by the main steam line break event analyzed in the FSAR. No new systems, modes of operation, failure modes or other plant perturbations are introduced; therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

(c) As previously stated, the high steam generator level trip is not credited in any safety evaluation. By definition, bypassing the trip cannot provide any reduction in the margin of safety that presently exists in the accident analysis and in the plant design.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: University of New Orleans

Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1986.

Description of amendment request: The proposed change would revise Technical Specification 3.10.2, "Moderator Temperature Coefficient, Group Height, Insertion, and Power Distribution Limits", along with the associated surveillance requirements in 4.10.2. The proposed change will allow suspension of certain limits specified in the specification to accomodate physics tests following startup after refueling. The associated Bases is also revised to reflect technical terminology utilized at Waterford 3.

In order to perform certain startup tests for Cycle 2 such as the verification of radial peaking factors at high power levels, it is necessary to insert the Part Length Control Element Assemblies (PLCEAs) and CEAs beyond the limits specified in Technical Specifications 3.1.3.6 and 3.1.3.7. Technical Specification 3.10.2 currently allows suspension of the insertion limits for full length CEAs specified in Technical Specification 3.1.3.6. Technical Specification 3.1.3.7 imposes similar limits on the insertion of PLCEAs; it is, therefore, necessary to also suspend these limits to perform physics tests.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this finding is given below.

(a) Suspending the limits on PLCEA insertion allows for measurement of data necessary to verify proper operation of the Core Protection Calculators (CPCs) following a refueling of the reactor core. Because the tests which rely on the SPECIAL TEST EXCEPTIONS in Specification 3.10.2 are relatively short in duration, core parameters related to the safety analyses are not adversely affected. Therefore, this change does not significantly increase the probability or consequences of any accident previously evaluated.

(b) Insertion of the PLCEAs beyond the limits specified in the proposed change to Technical Specification 3.1.3.7 is required to verify certain assumptions necessary to complete the Cycle 2 safety analyses. These tests are required to verify the safety analyses assumptions and are relatively short in duration. Core parameters related to the safety analysis are not adversely affected. No new systems, failure modes or plant perturbations from any previously analyzed are introduced. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) The limits imposed on PLCEA insertion, which are more restrictive than those currently allowed, are used as inputs to the Cycle 2 safety analyses. All safety analyses assumptions are still valid when this special test exception is invoked because the surveillance requirements associated with this specification confirm that the core parameters related to safety are not adversely affected. Therefore, this change does not involve a significant reduction in the margin of safety.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of § 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1986.

Description of amendment request: Technical Specification 3.1.3.7 imposes limits on the allowable position of the Part Length Control Element Assembly (PLCEA) groups and on the allowable burnup span during which the PLCEA may remain within a given position range during Modes 1 and 2. Technical Specification 3.1.3.7 currently states that the PLCEA groups shall be restricted in position between 0"—17" withdrawn (i.e. between fully inserted and 11% withdrawn) for a maximum period of seven Effective Full Power Days (EFPD) out of any 30 EFPD period. The proposed change would replace the entire current technical specification and would add a Figure 3.1–3 which: (1) allows a maximum PLCEA insertion to 75% withdrawal (112.5 inches) during long term steady state operation above 20% thermal power, (2) allows any PLCEA insertion below 20% thermal power (i.e. PLCEA insertion below 20% power has negligible effect on unexpected reactivity additions, axial flux perturbations, and axial peaking), and (3) allows a maximum transient PLCEA insertion to 15% withdrawal (22.5 inches) between 50% and 20% thermal power for a specified limited burnup duration. The more restrictive PLCEA insertion limits provided by the proposed changes to the Technical Specification, including Figure 3.1–3, will be used in the Cycle 2 Safety Analysis.

Surveillance Requirement 4.1.3.7 currently requires determination of the PLCEA group positions at least once per 12 hours. The proposed change would replace the entire current surveillance requirement with an equivalent requirement to determine that the PLCEA groups are within the transient insertion range once each 12 hours.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that this change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed finding is given below.

(a) There are two reasons for changing the technical specification. First, the proposed change, by imposing more restrictive insertion limits, will provide an improvement in the potential consequences of a PLCEA drop or slip

which initiates from an allowable inserted position. Second, the proposed change adds a more explicit Limiting Condition for Operation to clarify the allowable duration for the PLCEA to remain within defined ranges of axial position. Therefore, this proposed change will provide additional assurance that adverse axial shapes and rapid local power changes which affect radial power peaking factors and DNB considerations do not occur as a result of the part length CEA group being positioned in the same axial segment of fuel assemblies for an extended period of time during operation. Because the proposed change will impose more restrictive limits along with surveillance requirements to ensure adherence with the insertion limits, this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(b) For the same reasons given in (a), this proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

(c) For the same reasons given in (a), the proposed change does not involve a significant reduction in the margin of safety.

Moreover, adherence to this proposed technical specification will: (1) Eliminate the potential for unexpected reactivity addition which otherwise might occur should a PLCEA drop or move from a less to a more reactive axial position, (2) prevent undesirable perturbations on the axial distribution of core burnup due to PLCEA insertion, and (3) prevent unacceptably high axial peaking upon subsequent movement of the PLCEA groups.

As the change requested by the licensee's July 15, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for Licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 29, 1986.

Description of amendment request: The proposed change would revise ACTION statements "c" and "d" to Technical Specification 3.1.3.1, "Movable Control Assemblies, CEA Position". The reason for this change is to impose new requirements on power reduction during the period from 15 minutes to one hour following a full or part length CEA misalignment. This change would reduce the inward CEA deviation penalty factors currently provided by the CEA Calculators (CEACs) to the CPCs to a value of 1.0. The reduction of these penalty factors will reduce the sensitivity of the CPCs to CEA drops and to electronic noise which can be interpreted in the logic as a major CEA deviation and will therefore eliminate some unnecessary reactor trips.

The margins on DNBR and Linear Heat Rate (LHR) which now exist will be maintained after the reduction in the penalty factors. Currently, if an inward CEA deviation event occurs, the CPC algorithm applies two penalty factors to the DNBR and LHR calculations. The first, a static penalty factor is applied upon detection of the CEA deviation event. The second, a xenon redistribution penalty, is applied linearly as a function of time over a one-hour period following the detection of the deviation.

In the proposed change, the margin reserved by the DNBR Limiting Condition for Operation (LCO) is based on the maximum inward CEA deviation (i.e., the CEA Drop) and therefore accommodates changes in the static power distribution. This margin also accommodates the first 15 minutes of xenon redistribution effects for the limiting CEA drop. Thereafter, for up to one hour after the deviation event, the proposed change to this specification imposes a core power reduction to accommodate xenon redistribution effects occurring beyond the first 15 minutes. Therefore, the combination of the margin reserved by the DNBR LCO and the required core power reduction starting 15 minutes after the deviation is sufficient to maintain the required margins to DNB and LHR for the first hour after detection of the event. Thereafter, the current action statements in the Technical Specification apply.

Basis for proposed no significant hazards considerations determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Reducing the static penalty factor generated by the CEACs to a value of 1.0 is accounted for by setting aside the margin in the DNBR LCO. This ensures that the Specified Acceptable Fuel Design Limits (SAFDLs) on both DNBR and LHR can be maintained for up to 15 minutes following the limiting CEA drop event without any reduction in core power. Similarly, reducing the xenon redistribution penalty factor to a value of 1.0 is accounted for by imposing new requirements for core power reduction starting 15 minutes after the postulated CEA drop and continuing for an additional 45 minutes. Thereafter, all other ACTION statements in the Technical Specifications are applicable. Adhering to the proposed power reduction requirements ensures that the power peaking resulting from xenon redistribution will not result in a violation of the SAFDLs. Therefore, since the consequences of the limiting CEA drop event are still acceptable, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed change does not affect the logic used by the CPCs to mitigate the consequences of any Anticipated Operational Occurrence (AOO). Since the proposed change will not affect the ability of the CPCs to perform their design function of protecting the core against a violation of the SAFDLs (during an AOO), it will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) In the proposed change, credit is taken for available margin in the DNBR LCO. By staying within this LCO, there is margin to accommodate the first 15 minutes of the most limiting CEA drop. Thereafter, the proposed change requires a core power reduction to accommodate the increased power peaking associated with xenon

redistribution in the core. Therefore, the combination of additional margin reserved in the DNBR LCO and the required power reduction ensures that the proposed change will not involve a significant reduction in the margin of safety.

As the change requested by the licensee's August 29, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW. Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 10, 1986.

Description of amendment request: Item 6.2.2.d of the Administrative Controls section of the Waterford 3 Technical Specifications defines responsibilities to be observed during any core alterations. The intent of this specification is to require one licensed Senior Reactor Operator (SRO) to supervise/observe the core alterations. When core alterations are being performed by a licensed operator, the present Technical Specification allows the supervising SRO to be remote from the core alteration activities (with the understanding that direct communications are maintained). When non-licensed personnel are performing the core alterations, the intent of the present Technical Specification is to require the supervising SRO to be present during the alterations to also perform a direct observation function. However, the wording in the present Technical Specification could be misconstrued to require two SRO's (one to observe and one to supervise) for the case of non-licensed personnel performing the core alterations. The proposed change will resolve any ambiguity in SRO requirements for core alterations.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration. As required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is as follows.

(1) The existing Technical Specification is ambiguous. This change is intended solely for clarification and as such, makes no changes in the operation of the facility. Therefore, this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) As stated above, no change in operation will result from this change. In addition, no new systems, modes of operation, failure modes or plant perturbations are created with this change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) In providing clarification of responsibilities during core alterations, the actual activity of performing the alterations remains unchanged. Therefore, the proposed change will not involve a reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to the Technical Specification: for example, a change to achieve consistency throughout that Technical Specifications, correction of an error, or a change in nomenclature.

In this case, the proposed change is similar to Example (i) in that the change is intended only for purposes of clarifying potentially ambiguous wording and will impose no change on current or future operations of the Waterford facility.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) the proposed changes does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 12, 1986 and September 29, 1986.

Description of amendment request: The proposed change would revise ACTION Statement "c" of Technical Specification 3.3.3.8, "Fire Detection Instrumentation" and the associated Table 3.3–11. The proposed change to Table 3.3–11 will divide the present annulus fire zone RCB 1–1 into two distinct fire zones RCB 1–1 and RCB 1–2, with each zone containing approximately half of the smoke detectors presently assigned to RCB 1–1 This change is reflected in a new ACTION STATEMENT "c" in Technical Specification 3.3.3.8 which will require that with less than one annulus zone of smoke detectors operable, one zone must be restored to operable status within one hour or an eight-hour fire watch must be implemented except during the period when the shield building ventilation system surveillance testing is in progress.

Basis for proposed no significant hazards considerations determination: The annulus is an open area, approximately four feet wide, located between the primary containment steel wall and the secondary containment concrete wall of the Reactor Containment Building (RCB). Its function is to prevent the escape of contaminents by providing a space which can be maintained at a negative pressure around the primary reactor area.

Equipment within the annulus consists of the smoke detection system, communication and lighting fixtures, and the piping and ventilation ducts of

the annulus negative pressure system. All of the electrical cables for these systems are routed in conduit. Other components within the annulus are those which pass through from an adjoining building into the primary containment area. Such components include the fuel transfer canal from the Fuel Handling Building, personnel accessways from the Auxiliary Building and piping from the main steam, feedwater and purge systems. Electrical components, including power, instrumentation and control cables, are enclosed within metal sleeves.

The only insitu combustibles within the annulus are the smoke detectors themselves which represent a negligible combustible loading. All cable in the annulus is routed in conduit or metal sleeves. All cabling meets noncombustible test requirements of IEEE Standard 383, "IEEE Standard of Type Test of Class 1E Electrical Cables, Field Splices and Connections for Nuclear Power Generating Stations." All insulation and jacketing material for piping penetration assemblies passing through the annulus is non-combustible. Transient combustibles during repair or maintenance operations are strictly controlled by administrative procedure.

The annulus is void of heat and/or electrical spark generating equipment, i.e., potential ignition sources are absent. Maintenance and/or repairs which involve hot work are strictly controlled in accordance with administrative procedures.

An ionization smoke detection system is provided within the annulus. The system consists of 23 detectors encircling the −4' elevation, 23 detectors encircling the +21' elevation and 23 detectors encircling the +46' elevation. Detection alarm and trouble annunciation are provided in the Control Room on a local panel and the Master Remote Control Panel. The proposed change will divide the detection zone listed in Table 3.3–11 into two fire zones. One zone will consists of the upper (+46') string of detectors and half of the middle (+21') string. The second zone will comprise the lower (−4') string of detectors and half of the middle (+21') string.

The annulus smoke detectors, particularly the upper string, have had a tendency to spuriously alarm. This problem may be caused by dust accumulating on the detectors. Due to the high radiation environment at the upper string during power operation, the actual cause and resolution of the spurious alarms cannot be determined except during an outage.

The proposed change is requested for two reasons. First, during plant operation the environment within the annulus is not recommended for personnel entry. Temperatures range from 100 °F to 120 °F, radiation dose levels can be in excess of 100 mrem/hr., airborne contamination exists and oxygen levels are reduced to a level requiring SCBAs to be worn. ALARA (As Low As Reasonably Achievable) and other personnel safety concerns outweigh the need for an eight-hour fire watch in an area with no combustible loading or ignition sources when half the smoke detectors are operable.

Second, the requirement for an eight-hour watch conflicts with other Technical Specification surveillance requirements that could ultimately force the plant to shut down due to a spurious fire alarm. Specifically, Surveillance Requirement 4.6.6.1 requires that the shield building ventilation system be demonstrated operable. This surveillance, to be performed once every 31 days, requires the containment building to remain closed for ten continuous hours. Should the annulus fire detectors spuriously alarm near the end of such a 31-day period (and cannot be repaired due to the high radiation environment), the eight-hour fire watch will not allow a continuous 10-hour period for the shield building ventilation system test, thus mandating a plant shutdown, as required by Technical Specification 3.6.6.1.

The NRC staff has determined that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change will still require that approximately half of the annulus smoke detectors remain operable in the absence of an eight-hour fire watch. The annulus region contains no combustibles (with the exception of the smoke detectors, themselves), nor does it contain potential ignition sources. The proposed change will not significantly increase the probability or consequences of an annulus fire. Therefore, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed change maintains fire detection capability within the annulus when a fire watch is not required. No combustible or ignition sources are introduced by the change, nor are new components or modes of operation introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change preserves the capability to detect annulus fires. It does not change the total number of smoke detectors; it divides the fire zone into two fire zones. Therefore, coupled with the absence of combustible and ignition sources, the proposed change will not involve a significant reduction in the margin of safety.

As the change requested by the licensee's submittals dated September 12 and September 29, 1986 satisfy the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92(c); (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 26, 1986.

Description of amendment request: The amendment would delete Technical Specification 3/4.3.3.7.8 "Chlorine Detection System" and associated Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed Amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed

amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its June 26, 1986 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration (vi) is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the component system specified in the Standard Review plan (NUREG–0800). The proposed change would delete the requirements for chlorine detectors in the outside air intake duct of the control room heating, ventilating and air conditioning system. These chlorine detectors automatically close a damper in the air intake duct if chlorine concentration exceeds the trip setpoint of the detectors. The licensee has estimated the probability of occurrence of an offsite chlorine accident from barge traffic on the Mississippi River to be approximately 10^{-7} per year, which meets the acceptance criterion given in the Standard Review Plan (SRP) Section 2.2.3 "Evaluation of Potential Accidents". The SRP states that such offsite hazards do not need to be considered as design basis events if their expected rate of occurrence is less than 10^{-6} per year. Onsite liquid chlorine is stored in 150-pound cylinders at four different locations. The location closest to the reactor control building is approximately 225 meters away from the building. This complies with Regulatory Guide 1.95, Position 1 (referenced in Standard Review Plant Section 6.4, "Control Room Habitability System") which recommends that liquid chlorine in quantities greater than 20 pounds be stored at least 100 meters away from the reactor control building. The control room is provided with the capability for manual isolation thus complying with the guidance in Regulatory Guide 1.95, Position 2, which recommends such capability for 150-pound cylinders stored on site. Using methodology in NUREG–0570, "Toxic Vapor Concentrations in the Control Room Following a Postulated Accidental Release", and diffusion calculations from Regulatory Guide 1.78 (Referenced in SRP 6.4), the licensee calculated the consequences of a postulated failure of a chlorine cylinder, and found that the chlorine concentration inside the control room would be well below the toxicity guidelines of Regulatory Guide 1.78. Because the results of the deletion of chlorine detectors from the design are clearly within all the applicable acceptance criteria in the Standard Review Plan, the proposed change is found to be similar to example (vi) in the Commission guidance (51 FR 7744).

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

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NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 12, 1986.

Description of amendment request: This amendment would add maintenance and surveillance requirements for the Transamerica Delaval, Inc. (TDI) emergency diesel generators as an attachment to the Operating License. In addition, License Condition 2.C.(25)(b) would be changed to reference the new requirements. License Condition 2.C.(25)(b) now requires that recommendations from the TDI Owners Group Program applicable to GGNS Unit 1 and MP&L's actions in response to this program be submitted for review and approval prior to startup following the first refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed amendment is similar to this example. The revised License Condition 2.C.(25)(b) and the referenced attachment would constitute controls on maintenance and surveillance requirements for the TDI emergency diesel generators in addition to those presently included in the Technical Specifications. The present License Condition 2.C.(25)(b) has been fulfilled by the licensee's June 7 and August 13, 1986 submittals regarding Design Review/Quality Revalidation (DR/QR) inspections recommended by the TDI Owners Group and by the July 18 and September 12, 1986 submittals regarding maintenance and surveillance requirements recommended by the TDI Owners Group. Because the present License Condition 2.C.(25)(b) has been fulfilled and the proposed amendment would add new controls or surveillance and maintenance for the TDI emergency diesel generators, the changes in this

proposed amendment are similar to example ii of the Commission's examples (51 FR 7744).

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

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NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 15, 1986.

Description of amendment request: This amendment would change the Technical Specifications by adding three containment isolation valves to Table 3.6.4–1; one inboard valve in the post accident sampling system connection to Penetration No. 71B, and one inboard and one outboard valve in the test line to Penetration No. 71B.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change is similar to this example because the addition of the three isolation valves in Table 3.6.4–1 results in additional limiting conditions for operation of the plant. Technical Specification 3.6.4 requires that valves listed in Table 3.6.4–1 must be operable when the plant is in hot shutdown, startup or power operational conditions.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

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NRC Project Director: Walter R. Butler.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 5, 1986.

Description of amendment request: The amendment would modify the Technical Specification (TS) to reflect the removal of the reactor vessel head spray system. The spray nozzle within the reactor vessel, the head spray piping between the reactor vessel and the refueling bulkhead, and the containment isolation valves (RHR–MOV–32 and RHR–MOV–33) will be removed. Blind flanges will be installed on the vessel head and bulkhead penetration flanges. The outboard isolation valve (RHR–MOV–33) will be replaced by a welded cap. The proposed changes to the Technical Specifications would (1) delete the operability and surveillance requirements for containment isolation valves RHR–MOV–32 and RHR–MOV–33, (2) delete the aforementioned valves from Table 3.7.1 which identifies the primary containment isolation valves, (3) delete the aforementioned valves from Table 3.7.4 which identifies the testable containment penetrations associated with the isolation valves, and (4) delete the head spray function from the listing of containment isolation groups in Table 3.2.A.

Basis for proposed no significant hazards consideration determination: The reactor vessel head spray system is part of the Residual Heat Removal (RHR) System. It was provided for the purpose of facilitating plant shutdown by aiding reactor vessel head cooldown. At Cooper Nuclear Station and other similar facilities, head spray has proven unnecessary. Removal of the head spray system will decrease maintenance requirements and reduce personnel radiation exposure.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of the proposed amendment with respect to the Commission standards:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will decrease the probability of a leak from the reactor coolant system and reduce the potential for a small break loss of coolant accident. Also, since blind flanges and welded-in pipe caps are less subject to leakage and not subject to failure-to-close, as are motor-operated valves, primary containment integrity is enhanced. Since no credit is given to reactor head spray in the facility safety design basis for accident mitigation, the modification does not impact the consequences of a previously evaluated accident.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The capped-off piping outside the drywell will not be physically or functionally connected to any system, component, or equipment in a manner which could create a new or different kind of accident. Due to the welded-in cap, the remaining piping will be dead-ended to flow. Primary containment integrity will be insured by performance of 10 CFR 50 Appendix J leakage tests.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The head spray piping penetration will continue to be testable as a spare penetration and subject to local leak rate test requirements. The head spray nozzle and piping have no safety function and their removal will not affect the capability of the remainder of the RHR system to perform its safety function. The proposed modification will, in fact, improve safety by slightly reducing LOCA potential and improving containment integrity. Therefore, the proposed amendment involves no significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 17, 1986.

Description of amendment request: The amendment would modify the Technical Specifications to (1) indicate that barrier fuel is now included in the reactor design, (2) revise Minimum Critical Power Ratio (MCPR) limits, and (3) specify a MAPHLGR reduction factor of 0.77 for single-loop operation with barrier fuel. The affected sections of the Technical Specifications are (1) Section 5.2.A "Major Design Features-Reactor", (2) Section 3.11.C "Minimum Critical Power Ratio" and (3) Section 3.11.A "Average Planar Linear Heat Generation Rate".

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

In the staff Safety Evaluation for Amendment 93, supporting the Cycle 10 reload, the use of barrier fuel was approved. The staff Safety Evaluation stated that use of barrier fuel has been previously approved and no further review of the fuel design is required. Although Amendment 93 approved the use of barrier fuel for future cycles, it did not actually amend the Cooper Technical Specifications to indicate actual installation of barrier fuel, as barrier fuel was not included in the Cycle 10 core design. The proposed amendment would specify the actual installation of barrier fuel in the upcoming Cycle 11 and future core designs.

In Amendment 94, single-loop operation was approved for the current and future cycles with the condition that the MAPHLGR be reduced by various factors depending on the types of fuel installed. A reduction factor for barrier fuel was not included in Amendment 94 since barrier fuel was not installed at the time. The proposed amendment would add a reduction factor of 0.77 for single-loop operation with barrier fuel. The barrier fuel MAPHLGR reduction factor is the same as for similar non-barrier fuel.

The revised MCPR figure would reflect the Cycle 11 reload transient analysis.

These changes are within the scope of criterion (iii). Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 22, 1986.

Description of amendment request: The proposed amendment would add surveillance requirements to Technical Specification (TS) Section 4.4.5 as requested by the NRC staff in the Safety Evaluation transmitted with TS Amendment 73. Currently, the TS do not require a test to verify that the control room air treatment system can provide a positive pressure in the control room. The control room air treatment system is designed to provide a positive pressure in the control room during accident conditions. By maintaining the control room pressure positive compared to adjacent areas in order to assure that all leakage is out-leakage, control room habitability during accident conditions is assured.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of this surveillance test to the technical specifications will verify the capability of the control room air treatment system to meet its intended design of providing a positive pressure in the control room under accident conditions. Therefore, adding this test to the technical specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with this proposed amendment will essentially remain the same. Additional testing of the control room air treatment system will not create the possibility of a new or different kind of accident from any accident previously evaluated. The test consists of simply reading pressure gauges at the control room boundary and will not

interfere with operations or the function of safety systems.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This additional testing will not decrease the margin of safety at Nine Mile Point Unit 1. Since similar testing was not previously required by our Technical Specifications, this addition to the surveillance requirements of our Technical Specifications will increase our ability to assess the functional operation of our control room air treatment system. According to our current Technical Specification Bases, the Control Room Ventilation System can maintain a "positive pressure" in the Control Room. This proposal changes the bases to indicate that the Control Room Ventilation System can maintain "one-sixteenth of an inch positive pressure" within the control room. Therefore, the margin of safety will not decrease.

Therefore, based on the above considerations, it has been determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

NRC Project Director: John A. Zwolinski.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station, Unit 3 New London County, Connecticut

Date of application for amendment: September 5, 1986.

Description of amendment request: The amendment would revise Technical Specifications Sections 4.6.6.1, 4.7.7, 4.7.9 and 4.9.12 by replacing the 31-day requirement to use certified fan curves to verify building filtration system flow rates with a direct flowrate measurement and, deleting the 18 month requirement to verify the fan curves based on observed flow rates and pressure drops.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment requires the filtration system flowrates to be verified within a range of a specific value. Presently the technical specifications require use of fan curves to verify system flowrates against the system pressure drop with no specific value given. Therefore, the proposed surveillance requirements are more stringent than those currently in the technical specifications.

Since the proposed amendment does not modify the surveillance frequency, the changes will not affect system reliability. Direct flow measurements will increase the accuracy of the flow verification. This will improve the surveillance test verification that system flow rates are within unit design parameters.

Based on this information, the frequency of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Vincent S. Noonan.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: May 5, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to include the changes as a result of a detailed review of the TS that occurred following the 1985 refueling and recirculation piping replacement outage. Several of these changes are administrative in nature or are to clarify the interpretation of existing TS. Specifically, the changes are as follows:

(1) In Section 1.0.A, clarify the definition of "Alteration of the Reactor Core" by adding words, "with the vessel head removed and fuel in the vessel," to the end of the first sentence.

(2) In Section 2.3, page 17, delete the partial sentence in the first line of the first paragraph. These words should have been deleted with a previous license amendment request but were left through an oversight.

(3) In Table 3.1.1, "Reactor Protection System Instrument Requirements," move the reference to Note 4 from "Refuel" column to the "Trip Function" column and add the following note to the table on page 30: 9. High reactor pressure and main steam line high radiation are not required to be operable when the reactor vessel head is unbolted. Add a reference to Note 9 to the table entries for high reactor pressure and main steam line high radiation on pages 28 and 29.

(4) Delete Note 1 of Table 4.1.1 on page 33 and Note 1 of Table 4.2.1 on page 63a. Delete Figure 4.1.1 and correct the List of Figures to reflect deletion of this Figure. Delete all references to Note 1 on both tables and replace with a requirement for monthly surveillance. Delete those portions of the 4.1 and 4.2 Bases on pages 41–45 and 72–76 which refer to variable surveillance frequencies. These changes eliminate the options of extending the surveillance intervals to a maximum of 3 months by application of Figure 4.1.1.

(5) Add a Note 9 to Table 4.2.1 on page 63a to state "Testing of SRM Not-Full-In rod block is not required if the SRM detectors are secured in the full-in position." Also add a reference to Note 9 on page 61 under item 8 of Rod Blocks. Change the item to read, "SRM Detector Not-Full-In Position instead of, ". . . Note in Start-Up Position." Change the sensor check requirement from "Note 2" to "None."

(6) In Table 4.2.1, expand the headings for main steam, HPCI, and RCIC isolation by adding a reference to the containment isolation group and add a new category for Group 2 and Group 3 containment isolation. Delete Note 7 and all reference to Note 7 in the Table. Add a new Note 10 to state, "Uses contacts from scram system. Tested and calibrated in accordance with Table 4.1.1 and 4.1.2." Add a reference to Note 10 for containment isolation Group 2 reactor low water level and drywell high pressure surveillance.

(7) Revise the Bases section to explain the surveillance testing requirements in Section 4.0 of the TS and add information to assist in understanding and interpreting this section.

(8) In Table 3.2.5, "ATWS Instrumentation Requirements" revise Note 1 to read: "When one of the two trip systems is made or found to be inoperable, restore the inoperable trip system to operable status within 14 days or place the plant in the specified required condition within the next eight hours. When both trip systems are inoperable, place the plant in the specified required condition within eight hours unless at least one trip system is sooner made operable."

(9) Revise Section 3.3.D, " Control Rod Accumulators," to clarify the operability requirements for control rod accumulators. Delete the last paragraph of Specification 3.3.D and redesignate items 1 and 2 under 3.3.D as items 3.3.D.1 (a) and (b). Reword the opening paragraph to state, "Control rod accumulators shall be operable in the Startup, Run, or Refuel modes except as provided below." Add Specification 3.3.D.2 as follows:

In the Refuel Mode, a rod accumulator may be inoperable provided:

(a) All fuel is removed from the cell containing the associated control rod, or

(b) The one-rod-out refuel interlock for the associated rod drive is operable.

(10) Revise Sections 3.5.D.1, "High Pressure Coolant Injection (HPCI) System," Section 3.5.E.1, "Automatic Pressure Relief System (APRS)," and Section 3.5.F.1, "Reactor Core Isolation (RCIC) System," so that the operability of these systems is not required above 150 psig during reactor coolant system leakage and hydrostatic tests.

(11) In Section 3.7.A.1, "Primary Containment," reword the first paragraph to allow draining of the suppression chamber when irradiated fuel is not in the reactor vessel as follows, "When irradiated fuel is in the reactor vessel and either the reactor coolant temperature is greater than 212° F or work is being done which has the potential to drain the vessel, the following requirements shall be met except as permitted by Specifications 3.5.G.4. . . ."

(12) In Section 3.7.C.2.b, delete the phrase ". . . and the reactor coolant system is vented," since the requirements for the reactor to be vented as a condition for not requiring secondary containment integrity conflicts with normal and reasonable activities during outages.

(13) In Section 3.10.E, "Extended Core and CRD Maintenance", delete Specification 3.10.E.2 and redesignate Specification 3.10.E.1 and 3.10.E. Reword the first portion of the Specification to read, "More than one control rod may be withdrawn from the reactor core during outages provided that, except for momentary switching to the startup mode for interlock testing, the reactor mode switch is locked in the refuel position. The refueling interlock. . . ." Change "withdrawn control rod" to "control rod" in two locations. Existing TS 3.10.E.2 is totally redundant to TS 3.10.B and therefore unnecessary and this change also clears the conflict between existing TS 3.10.E.1 which requires the mode switch to be locked "Refuel," and TS 4.10.A, which requires weekly check of the refueling interlockes requiring switching momentarily to the "startup" mode.

(14) In Section 3.14," Accident Monitoring Instrumentation," clarify the operability requirements by revising the words "Whenever the reactor is in the startup or run mode," to "Whenever irradiated fuel is in the reactor vessel and reactor coolant water temperature is greater than 212° F." The revised wording allows testing and other normal operations during outages and is consistent with other accident mitigation system operability requirements (i.e., above 212° F) and NRC Standard TS. In addition, revise the notes to Table 3.14.1 to require placing the plant in the cold shutdown condition within 24 hours when required conditions of instrument operability are not satisfied.

(15) In Tables 3.14.1 and 4.14.1, add the operability and surveillance requirements for the suppression pool temperature monitoring instrumentation as required by the Mark I Containment Long-Term Improvement Program to accurately monitor suppression pool average temperature.

(16) In Table 4.14.1, "Minimum Test and Calibration Frequency for Accident Monitoring Instrumentation," provide additional notes to clarify sensor check requirements for reactor water level, SRV valve position pressure switches, and SRV valve position thermocouples as follows: (2) Once/month sensor check will consist of verifying that the pressure switches are not tripped. (3) Once/month sensor check will consist of verifying fuel zone level indicates off scale high. (4) Following every Safety Relief Valve actuation it will be verified that recorder traces or computer logs indicate sensor responses. Add a reference to Note 2 for SRV position pressure switches. Add a reference to Note 3 for reactor vessel fuel zone water level, and add a reference to Note 4 for SRV position pressure switches and thermocouples.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard determiniation exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards considerations. Therefore, in accordance with 10 CFR 50.92, the following analysis has been performed by the licensee.

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would (1) clarify the definition of Core Alteration, (2) correct a typographical error in the Section 2.3 Bases, (3) correct and clarify the Startup Mode operability requirements for high drywell pressure, high reactor pressure, and main steam line high radiation, (4) delete the obsolete provisions of the Technical Specifications which allow surveillance intervals to be extended, (5) correct conflicts with the SRM-Not-Full-In rod block interlock and CRD maintenance, (6) correct and clarify the surveillance requirements for containment isolation instrumentation, (7) provide an additional section to the Bases related to general surveillance requirements, (8) correct the action statements for ATWS instrumentation to correspond with the as-installed logic, (9) clarify CRD accumulator operability requirements, (10) correct the HPCI, RCIC, and APRS operability requirements to permit reactor coolant system leakage and hydrostatic testing, (11) clarify the requirements for containment integrity when no fuel is in the reactor, (12) correct and clarify the relationship between secondary containment requirements and reactor venting, (13) clarify the requirements for extended CRD maintenance, (14) correct and clarify the operability conditions for accident monitoring instrumentation, (15) add Technical Specifications limiting conditions for operation and surveillance requirements for suppression pool temperature monitoring instrumentation, and (16) clarify the meaning of sensor checks for safety/relief valve positon pressure switches and reactor fuel zone water level instrumentation.

With the exception of item 2, which corrects a typographical error, and item 15, which adds Technical Specification requirements for a new instrumentation system, all of these changes have the intent of eliminating conflicts and interpretation problems in the Technical Specifications.

These items were identified during a detailed review of the Technical

Specifications by senior SRO licensed members of the Monticello technical staff. This review was made to fulfill a commitment made to NRC Region III and NRC NRR management following the discovery during the last refueling and maintenance outage of a number of conflicts in the Technical Specifications.

With the exception of items 2 and 15, these changes improve the clarity and logic of the wording in the Technical Specifications. While some relief from impossible or unreasonable restrictions is granted in several instances (e.g. HPCI will no longer be required operable during hydrostatic tests—but because the vessel is filled solid with subcooled water during these tests it is an impossible condition to impose), the requested changes will not, in any significant way, change the way the plant is operated or maintained.

Item 2 is a purely administrative change. Item 15 adds new requirements for an instrumentation system installed to meet the requirements of the NRC approved Mark I Containment Long Term Program and NRC Regulatory Guide 1.97, Revision 2. It is a new instrumentation system which will enhance the information available to plant operators during normal and postulated accident conditions.

Since the requested changes will not, in any significant way, affect any aspect of plant operation or maintenance or relax, in any significant way, valid limitations placed on systems and equipment, they will not increase the probability of [or] consequences of any previously evaluated accident.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, item 2 is an administrative change which corrects a typographical error. Item 15 adds additional requirements to the Technical Specifications for a new instrumentation system. The remainder of the requested changes make desirable clarifications and remove conflicts from the Technical Specifications. Since the requested changes will not, in any significant way, affect any aspect of plant operation or maintenance or relax, in any significant way, valid limitations placed on systems and equipment, they will not create the possibility of a new or different kind of accident from any accident previously analyzed.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

As discussed above, the proposed changes involve the corrections of a typographical error, adding limiting conditions for operation and surveillance requirements for a new monitoring instrument, clarifications, changes which remove conflicts between various sections of the Technical Specifications, and a number of changes which eliminate impossible or unreasonable limitations on plant systems and components. This latter group of changes may be considered relief from restrictions imposed by the Technical Specifications, but in every case the proposed change will not in any significant way, change any aspect of plant operation and maintenance or relax, in any significant way, valid limitations placed on systems and equipment. Therefore no proposed change significantly reduces any margin of safety as described in the Technical Specifications or Updated Safety Analysis Report.

The Commission has provided guidance concerning the application of the Standards for determining whether a significant hazards consideration exists by providing certain examples of amendments that are considered not likely to involve significant hazards considerations. These examples were published in the Federal Register on March 6, 1986.

Item 2 of this application is representative of a purely administrative change presented as NRC example (i). Items 4 and 15 of this application are similar to NRC example (ii) since they consist of additional limitations, restrictions, or controls not presently in the Technical Specifications. The remaining items are similar to NRC example (i) since they can be described as corrections of errors, correction of nomenclature, and changes necessary to achieve consistency.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 11, 1986.

Description of amendment request: The proposed amendment to the Technical Specifications (TS) revises Section 6.3 and Figure 6.2-1 to note the use of dual-role Senior Reactor Operator/Shift Technical Advisors (SRO/STA) in the operating shift organization. Provisions are maintained for optional use of a separate STA position and are also maintained for STA qualification of thirteen SRO's who have already completed the FitzPatrick Advanced Technical Training Program.

The proposed changes reflect the guidance contained in Generic Letter 86-04, "Policy Statement on Engineering Expertise on Shift," which specifies the qualifications of personnel eligible to fulfill the duty of STA and encourages licensees to utilize the dual-role position. In addition, several editorial changes have been proposed to reflect the above revisions.

Basis for proposed no significant hazards consideration determination. In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination, the staff must establish that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed TS revisions do not involve a physical modification to the plant, a change in operating procedures, or a change in limiting conditions of operation. Additionally, the proposed revisions will not result in a decrease in expertise on shift or a change in the minimum shift complement, and are consistent with the guidance provided in Generic Letter 86-04. On these bases, plant operation in accordance with the proposed amendment would satisfy the three criteria stated above.

Based on the foregoing, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State

University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: July 22, 1986.

Description of amendment request: The licensee provided the following description:

A. Proposed Changes to Figure 6.2–1.

The proposed changes to figure 6.2–1 of the Indian Point 3 Technical Specifications illustrate the following changes in responsibility and management reorganization:

1. The Department of Quality Assurance and Reliability has been changed to the Department of Appraisal & Compliance Services. In addition, the title of the Vice President of Quality Assurance and Reliability has been changed to Senior Vice President—Appraisal and Compliance Services.

2. The Director of Safety and Fire Protection who previously reported to the Vice President—Quality Assurance and Reliability, now reports to the new position of Director of Security, Safety, and Fire Protection.

3. The Executive Vice President & Chief Engineer—Engineering and Design (formerly Executive Vice President—Chief Engineer) reports to the First Executive Vice President—Operations (formerly the First Executive Vice President and Chief Operations Officer). The position of First Executive Vice President and Chief Development Officer has been eliminated.

B. Proposed Changes to Figure 6.2–2.

The proposed changes to figure 6.2–2 reflect the change in title of the Senior Vice President—Quality Assurance & Reliability. In addition, a new position has been added. The Director—QA will report to the Senior Vice President—Appraisal and Compliance Services. Consequently, the QA Superintendent & Staff will now report to the Director—QA.

C. Proposed Changes to Subsection 6.5.2.2.

The proposed changes to subsection 6.5.2.2 of the Technical Specifications consists of the following changes:

1. The title of Vice President Nuclear Support—BWR has been changed to Vice President—Nuclear Operations;

2. The title of Vice President Nuclear Support—PWR has been changed to Vice President—Nuclear Engineering;

3. The title of Vice President—Generic Nuclear Support has been changed to Vice President—Nuclear Support.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of these changes:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed changes described and evaluated above do not involve a significant increase in the probability or the consequences of an accident previously evaluated since the reorganization of the Authority is purely an administrative change and does not involve a hardware or procedural change to the facility. The chain of command from the President and Chief Operating Officer to the facility Resident Manager does not change in length or in personnel or SRC function. All personnel affected by the reorganization continue to meet the educational and experience levels described in the FSAR for positions previously having these responsibilities. This change will not adversely impact previously evaluated accidents.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

These changes do not create the possibility of a new or different kind of accident previously evaluated since the reorganization is designed to enhance the management and efficiency of the Authority. This cannot create the possibility of a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The proposed changes do not involve a reduction in a margin of safety since all individuals affected by the reorganization described in this application continue to meet the educational and experience levels described in the FSAR for positions previously having these responsibilities.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: July 22, 1986.

Description of amendment request: The proposed amendment updates the Technical Specifications description of the Nuclear Operations organization for Public Service Company of Colorado. These changes do not directly affect plant operation.

Basis for proposed no significant hazards consideration determination: Since the proposed changes to Section 7.1 of the Fort St. Vrain Technical Specifications are administrative in nature, no significant safety hazards considerations are involved. Operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. This change can be considered to come under example (i) of the examples provided by the Commission (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

NRC Project Director: Herbert N. Berkow.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 14, 1985, as revised February 13, 1986. (This request completely supersedes an application dated June 27, 1984, as amended on December 24, 1984 which was noticed on February 27, 1985 [50 FR 8005].)

Description of amendment request: The proposed amendment would delete from the Rancho Seco Technical Specifications (TSs) all references to

reactor vessel material surveillance. More specifically, TS Section 4.2.1 and Table 4.2–1 related to reactor vessel material surveillance and reporting requirements would be deleted, including the associated paragraph on supporting bases.

In addition, the proposed amendment requests withdrawal of the exemption from 10 CFR Part 50, Appendix H, contingent upon Commission approval of the Integrated Reactor Vessel Material Surveillance Program (IRVSP) documented in BAW–1543A, Revision 2, for Rancho Seco.

Basis for proposed no significant hazards consideration determination: In letters dated March 13 and May 3, 1985, the Commission concluded that the Babcock & Wilcox Owners Group (B&WOG) Materials Committee Report, BAW–1543, Revision 2, for an IRVSP was acceptable for reference in licensing applications.

Furthermore, in another letter to B&WOG dated May 8, 1985, the Commission stated any applicable licensee may formally request specific approval of the IRVSP in accordance with Section II.C of Appendix H, 10 CFR Part 50; and with such a request, each licensee may also submit a license amendment to remove the current reactor vessel material surveillance requirements from their TSs.

Following the guidance established by the aforementioned letters, the licensee has requested approval of the B&WOG IRVSP for Rancho Seco and has submitted a license amendment to delete the associated TS requirements. Additionally, the licensee has requested withdrawal of the exemption from 10 CFR Part 50, Appendix H, upon Commission approval of IRVSP for Rancho Seco.

In the proposed license amendment, the licensee maintains that operation of Rancho Seco in accordance with the proposed TS changes, to delete all references to the current reactor vessel material surveillance requirements, does not involve significant hazards considerations. This conclusion was based upon a licensee evaluation of the criteria for no significant hazards considerations prescribed by 10 CFR 50.92(c), which requires that a proposed amendment:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated, or

(2) Would not create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) Would not involve a significant reduction in a margin of safety.

The Commission's staff has reviewed this proposed amendment and concurs with the licensee's conclusion of no significant hazards considerations. Removing reactor vessel material surveillance requirements from the TSs does not involve a change in system(s) configuration or operation of Rancho Seco. As such, it does not increase the probability or consequences of an accident, nor does it introduce the possibility of a new or different kind of accident. The Rancho Seco reactor vessel material surveillance program will be conducted in compliance with 10 CFR Part 50, Appendix H. Development of TS pressurization, heatup and cooldown limitations are based upon reactor vessel surveillance capsule analysis. There will be no significant reduction in the margin of safety because capsule analysis and the methodology for developing TS limitations are not appreciably changed by this amendment. Therefore, the Commission's staff proposes to determine that this application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Southern California Edison Company, et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: June 13, 1986 (PCN–217).

Description of amendment request: The fuel handling building isolation system (FHIS) is designed to prevent the release of radioactivity from the fuel handling building (FHB) in the event of a fuel handling accident. The FHIS is actuated by high radiation level in the FHB, as detected by an airborne radiation monitor that measures noble gas activity. The current setpoint (130 cpm above normal background) has on several occasions been exceeded due to normal fuel handling activities in the FHB.

The proposed change would modify Table 3.3–4 of Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation", which provides a listing of trip values for various ESFAS instrumentation. Specifically, the change would revise the allowable noble gas alarm setpoint in Table 3.3–4 for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 fuel handling buildings. The proposed change would require that the trip setpoint be set "sufficiently high to prevent spurious alarms/trips, yet sufficiently low to assure an alarm/trip if a fuel handling accident should occur." A specific value for the setpoint was not proposed, because the background radiation level in the FHB will change with time as fuel is moved into and out of the FHB. The proposed wording will allow the licensee to select the appropriate setpoint for a given background level.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed setpoint change would not involve a significant increase in the probability or consequences of the fuel handling accident previously evaluated. This proposed change will impose a new administratively controlled alarm setpoint high enough to prevent any spurious alarms resulting from normal fuel handling activities and yet sufficiently low to assure that the fuel handling isolation system (FHIS) will properly actuate in the event of a fuel handling accident. This requirement is similar to that used for the containment purge isolation system.

A study has been performed by the licensee to justify the proposed setpoint change. The study shows that the monitor response resulting from a design basis fuel handling accident of sixty (60) broken fuel rods is of the order of 497,000,000 cpm. A less severe accident involving only sixteen (16) failed fuel rods will give rise to 126,000,000 cpm. Thus, a conservative value for the setpoint can be determined which is greater than the highest ambient background level but well below the calculated monitor response to a fuel handling accident. This value would ensure early activation of the FHIS in the event of a fuel handling accident and would also eliminate nuisance alarms from either noise spikes or fuel handling operations. Thus, the revised setpoint

will not result in a reduction in the monitoring and isolation capability of the FHIS.

(2) No change to operating procedures for SONGS 2 and 3 is involved. Operations pertinent to fuel movement and reconstitution activities still fall within the scope of the existing fuel handling accident analysis. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed setpoint change would not involve a significant reduction in margin of safety even though it would increase the allowable technical specification alarm setpoint. The licensee's analysis of the monitor response to a fuel handling accident shows that the noble gas contamination levels under various accident circumstances far exceed ambient background levels at SONGS 2 and 3. A fuel handling accident will be detected by the FHB gaseous monitor with essentially the same level of confidence under the proposed change, because the revised setpoint will be maintained well below the radiation level that would result from a fuel handling accident.

As the change requested by the licensee's June 13, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assure that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impacts of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362z San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 22, 1986.

Description of amendment request: The proposed change would modify Technical Specification 3/4.9.6, "Refueling Machine." Specifically, the proposed change would revise the existing Limiting Conditions for Operation (LCOs) to reflect an increase of 200 pounds to the load limit for the refueling machine to accomodate the installation of a removable TV camera unit rather than a fixed TV camera on the refueling machine hoist box. The change would redefine the minimum capacity of the refueling machine from 3000 pounds to 3200 pounds. The overload cut off limit would also be changed to 3550 pounds instead of 3350 pounds.

Basis for proposed no significant hazards determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The probability or consequences of an accident are not increased by the proposed change since the removable TV camera unit meets the design criteria for Control Element Assemblies (CEA) and fuel assembly handling equipment specified in the Final Safety Analysis Report (FSAR) for SONGS Units 2 and 3.

(2) The increase in load limits will accommodate the installation of the removable TV camera unit. Since the overload limit is active only when the fuel assembly is enclosed in the hoist box, no fuel damage is credible with respect to the proposed setpoint change. Also, the added weight of the removable TV camera does not exceed the capacity of the refueling machine hoist mechanism. Thus, the operation of the facility in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan; therefore, there is no reduction in the margin of safety previously established, since the operation of the refueling machine under the proposed LCOs will not present any increased potential for damage to CEAs or fuel assemblies, nor will it affect the existing safety analyses and design criteria.

As the change requested by the licensee's August 22, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 5, 1986.

Description of amendment request: The amendment would correct a clerical error, which has been incorporated into Amendment No. 93 to the Davis-Besse Technical Specifications (TSs), by inserting the word "or" after the words "within 7 days," in action statement "a" of Section 3.7.9.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7750). One of the examples (i) of actions involving no significant hazards considerations relates to amendments of a purely administrative change to TSs; for example, a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature. The proposed revision would make the reporting requirements of Section 3.7.9.1 consistent with the reporting requirements of fire protection TS Sections 3.3.3.8.b, 3.7.9.2.a, and 3.7.10.a, and correct an error, which would match this example of an

administrative change to TSs. The change would also make the reporting requirements consistent with requirements of the B&W Standard TSs.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Project Director: John F. Stolz.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request: August 29, 1986.

Description of amendments request: The proposed change would revise the NA–1&2 Technical Specifications (TS), Section 6 (Administrative Controls). Specifically, the proposed change would modify Section 6 as follows: (1) reflect a recent company reorganization in which the Quality Assurance (QA) organization will now report to the Senior Vice President—Engineering and Construction, instead of the Senior Vice President—Power Operations, (2) change the title of the QC Supervisors reporting to the Manager, QA from "Supervisors—Quality Control—Q.A. Activities" to "Supervisors Quality," (3) change the title of "Supervisor Health Physics" to "Superintendent—Health Physics," (4) change the title of "Director—Emergency Planning" to "Supervisor—Corporate Emergency Planning," and (5) change the facility organization chart to reflect the recent administrative title changes. Since the major emphasis of the company's nuclear program is on operations rather than construction, it is appropriate that the QA organization be realigned with construction to enhance the independence of the QA Organization. The remaining changes are purely administrative in nature involving changes in nomenclature as well as a change to achieve consistency with the NRC approved VEPCO QA Topical Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing certain examples which were published in the **Federal Register** on March 6, 1986 (51 FR 7751). Example (i) states: "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature." The proposed change is enveloped by example (i) above, since the proposed change reflects the current reorganization of the Quality Assurance Organization to provide more emphasis on construction rather than operations and, also, to achieve consistency with the NRC approved VEPCO Quality Assurance Topical Report. It is noted that this change will enhance the independence of the licensee's Quality Assurance Organization. The other changes will provide consistency with the licensee's NRC approved Quality Assurance Topical Report and make administrative title changes to corporate and station organizations.

Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 12, 1986.

Description of amendment request: The proposed changes would revise the NA–1&2 Technical Specifications (TS) in order to allow the tie-in, startup, and operation of a replacement spray system for the existing Service Water Spray System (SWSS) and its related components. The replacement spray system now being installed has been designed to the original code requirements of the NA–1&2 SWS. Per the repair and replacement rules of ASME Boiler and Pressure Vessel Code, Section XI, the system will meet the requirements of the Nuclear Power Piping Code, ANSI (formerly USAS) B 31.7—1969 Edition with addenda through 1970.

The operating and design bases for the replacement system are consistent with the original spray system. Increased operating flexibility has been provided by utilizing eight individual arrays (as opposed to the four existing) which cover a larger area of the reservoir. Operating experience with the existing system has led to the incorporation of a winter bypass feature to improve operability during extreme winter weather. The replacement spray system design provides additional margin between design heat rejection capability and required heat rejection capability through improvements in piping layout. The materials of construction and arrangement of the piping and support system minimize and facilitate routine maintenance. Easy access to the piping and associated supports is provided to facilitate periodic inspection and surveillance activities.

The proposed changes to the NA–1&2 would modify several component and structure tabulations to allow operation and surveillance of a replacement SW spray array system. The need to revise the TS arises primarily from the addition of equipment (i.e. replacement of motor-operated valves, piping, instrumentation) and the SW valve house and tie-in vault.

TS 3/4.3.3 addresses various types of monitoring instrumentation. Section 3/4.3.3.7 discusses Fire Detection Instrumentation. Table 3.3–11 requires revision to include fire detection instrumentation in the new SW valve house. This instrumentation consists of temperature detectors of the rate-compensated, electric-contact type similar to those used throughout the plant in areas such as the normal switchgear room, cable-tray-spreading room, primary cable vault and tunnels, etc. The minimum number of operable heat detectors required in the valve house is four: two in the west room and one in each of the east rooms. A total of seven heat detectors will be installed which includes three in the west room and two in each of the east rooms. The heat detection system for the SW valve house has been designed in accordance with applicable NFPA Standards and is consistent with the requirements outlined in the NA–1&2 UFSAR Section 9.5.1 in terms of spacing and location.

TS 3/4.7.12 addresses settlement of Class 1 structures. The new SW valve house and tie-in vault need to be included in the Settlement Monitoring program. Table 3.7–5 requires revision to include these two structures. In addition to the Limiting Condition for Operation (LCO) listed in Table 3.7–5, the Bases section of 3/4.7.12 also requires revision to include the valve house and tie-in vault monitoring points and their associated limiting items.

Four settlement markers will be added to the valve house and tie-in vault.

Baseline elevations will be established for the points prior to final system tie-in. At intervals defined in the TS, the elevations of these points will be measured by accurate survey. The baseline elevations will be periodically compared to current values; if the change exceeds prescribed limits, appropriate action is taken. The settlement monitoring points, limiting values and monitoring frequencies for the SW valve house and tie-in vault are consistent with the requirements for other Class I structures and satisfy the requirements outlined in the bases of TS and the NA–1&2 UFSAR Section 3.8.4.

TS 3/4.7.13 addresses the groundwater level in the SW reservoir. Table 3.7–6 requires revision to show the location of Piezometer No. 18 at the new SW valve house. This location is currently monitored as part of 3/4.7.13. The change proposed here is to change the designation of this point from "SWPH, (Units 3 and 4)" to "SWVH, (Units 1 and 2)."

TS 3/4.3.1 "A.C. Sources" addresses the A.C. electrical power sources. Table 4.8–1 provides a listing of load sequencing timers and this table requires revision to include new timers for the SW reservoir discharge Motor Operated Valves (MOV's). This change incorporates a 15 second time delay between the occurrence of a Safety Injection (SI) signal and the actuation of the replacement spray array MOVs. All bypass MOVs will receive SI signals to "close" and all spray array MOVs will receive SI signals to "open." However, in order to reduce the negative starting effects these MOVs would have on the emergency electrical distribution system, a time delay to start has been incorporated into the design. Delaying the operation of the spray array and bypass MOV's 15 seconds would not detrimentally affect the SW system for the following reasons:

(1) The additional heat dissipation requirement (above normal heat load) on the SW system during the first 15 seconds following a SI signal is negligible with the delayed MOV starting.

(2) The most significant heat load generated from the accident unit and removed by SW originates from the Recirculation Spray (RS) coolers. The RS system does not function until t = 195 seconds after the accident when the inside recirculation spray pumps start, provided a Containment Depressurization Signal (CDA) is present.

TS do not specify engineered safety feature response times for the SW system, therefore, delaying the operation of the SW spray array and bypass MOV's for 15 seconds is justifiable in accordance with the above. Delaying the operation of these valves will have a positive effect on the station's electrical distribution system during accident scenarios (i.e., GCD–17 voltage profiles).

TS 3/4.8.2 "Onsite Power Distribution System" addresses the onsite power distribution system which must be operable. Table 3.8–2 identifies MOVs with thermal overload protectors and/or bypass devices. This table will be revised to reflect the addition of new MOVs. The table will also show that there are no bypass devices for these MOVs. In addition, since these valves are replacing the existing spray array motor-operated valves, the entries in the table for the existing MOV–SW200 A&B are being deleted.

The new valves meet or exceed the original design requirements of the existing valves and their design, including the motor thermal overload protection, and is consistent with the design basis of the SW system as outlined in the NA–1&2 UFSAR Section 9.2.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed TS changes do not involve a significant hazards consideration because operation of NA–1&2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The replacement design and equipment (specifically, the fire detection instrumentation—Section 3/4.3.3.7, settlement markers and limits—Section 3/4.7.12, load sequence timers—Section 3/4.3.1 and motor operated valves with thermal overload protectors—Section 3/4.8.2) meet or exceed the original safety-related requirements of the existing SWS as noted above. Also, the change to TS 3/4.7.13 only involves a change in nomenclature;

(2) create the possibility of a new or different kind of accident from any accident previously identified. It has been determined that a new or different kind of accident will not be possible due to these changes. The design and operating bases of the SW replacement spray system are consistent with and meet or exceed the requirements of the existing system. No new accidents are introduced by the new design; or

(3) involve a significant reduction in a margin of safety. The margin of safety is not reduced since the replacement system serves the same purpose as the existing spray array system and the replacement design and equipment meet or exceed the original safety-related requirements of the existing SW system. The Limiting Condition for Operation and Surveillance Requirements of the TS sections 3/4.7.4 Service Water System and 3/4.7.5 Ultimate Heat Sink remain unchanged by the proposed modifications.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve a significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: August 22, 1986.

Description of amendment requests: The proposed changes would extend the duration of the Operating Licenses (DPR–32 and DPR–37) to 40 years from the date of issuance of the Operating Licenses. This request would allow for 40 full years of operation by changing the license expiration dates to May 25, 2012, for Unit 1 (DPR–32) and to January 29, 2013, for Unit 2 (DPR–37).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for

determining whether a proposed license amendment involves significant hazards considerations. The licensee has reviewed its amendment request and determined that the proposed amendments would not:

1. . . . involve a significant increase in the probability or consequences of any accident previously evaluated since no changes are required to the design or operation of the station. This [sic] amendment[s] do not involve new or revised safety analyses, physical plant modifications, procedure changes, [Updated Final Safety Analysis Report] UFSAR Revisions or Technical Specification revisions. The proposed license extensions are within the original design considerations for the station[;] and the current surveillance, inspection, testing and maintenance practices provide assurance that degradation in plant equipment will be identified and corrected throughout the lifetime of the facility.

2. . . . create the possibility of a new or different kind of accident from any accident previously evaluated since no changes are required to the design or operation of the station.

3. . . . involve a significant reduction in a margin of safety since no changes are required to the design or operation of the station and since the amendment[s] do not involve new or revised safety analyses, procedure changes, UFSAR revisions or Technical Specification revisions. The current surveillance, inspection, testing and maintenance practices provide assurance that degradation in plant equipment will be identified and corrected throughout the lifetime of the facility.

Based on the above considerations, the licensee concluded that there is no significant hazards consideration associated with the proposed revision to Surry Operating Licenses. The staff has reviewed the licensee's no significant hazard determination and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested amendments involve no significant hazard considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubenstein.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 26, 1986.

Description of amendments request: The proposed changes to the Technical Specifications would revise the surveillance requirements for main steam stop valves, main steam safety valves, and pressurizer safety valves. The periodicity for testing main steam safety valves and pressurizer safety valves would be changed from once each refueling to once every five years. The test conditions for main steam stop valves closure times would be changed from no-flow conditions to low-flow conditions based upon the minimal steam flow that may exist under the proposed hot initial test condition.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that the Commission may make a determination that a proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has stated in support of the requested amendments that changing the main steam and pressurizer safety valve testing periodicity does not significantly increase the probability or consequences of an accident previously evaluated in that the periodicity requested is in compliance with the guidelines of a nationally accepted standard. The licensee also stated that the changing of the test conditions for main steam stop valve surveillance does not alter the initial conditions or consequences of the analyzed main steam line rupture accident as contained in the FSAR.

Regarding the second criterion, the licensee has stated that the changes are revisions to surveillance requirements and conditions. Thus, no new or different accident can be created as no changes or modification to the physical plant have occurred.

Regarding the third criterion, the licensee has stated that the changes would not involve a significant reduction in a margin of safety because the changes relative to main steam and pressurizer safety valve testing are a request for adherence to the guidelines of the ASME Code Section XI for inservice testing of safety valves. The purpose of this section of the Code is to ensure a sufficient margin of safety exists relative to the proper functioning of these components, verifiable through a specified testing periodicity. Also, no reduction in the margin of safety will occur with the new test conditions for main steam stop valve surveillance. Since the applicable accident analysis remains unchanged, the margin of safety remains unaffected.

On the basis of the above analysis, the licensee has determined that the proposed amendments would not involve a significant hazards consideration. The staff has reviewed the licensee's determination that the proposed amendments would not involve a significant hazards consideration. The staff feels that the licensee has correctly addressed the three criteria contained in 10 CFR 50.92 and, therefore, proposes to determine that the amendments would involve no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 29, 1986.

Description of amendments request: The proposed changes to the Technical Specifications (TS) would modify the limiting conditions for operation (LCO) of the component cooling water (CCW) system to correspond to changes in the system configuration in which another shared heat exchanger was added to the system. Specifically, the current TS require that a unit not be made critical unless both CCW heat exchangers which can be aligned to a unit are operable. This proposed change would allow one of three heat exchangers which can be aligned to a unit to be inoperable prior to startup.

A second change involves the number of heat exchangers which may be inoperable during power operation of either one or two units. The current TS allows one CCW heat exchanger to be out of service for 48 hours during power operation. The proposed change would allow two of the three heat exchangers which may be aligned to a unit to be inoperable for up to 48 hours.

A third change involves removing the limiting condition for operation based on one passive component other than a heat exchanger being out of service.

Basis for proposed no significant hazards consideration determination: The number of operable CCW heat

exchangers per unit which would be required by the proposed TS is not different than would be required by the current TS if the system had not been modified to add an additional shared heat exchanger. Therefore, the proposed amendments would not involve an increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident than any accident previously evaluated, or involve a significant reduction in a margin of safety. On this basis, the staff proposes to determine that the proposed amendments would not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: June 30, 1986, as superseded September 2, 1986.

Brief description of amendment: The proposed amendments would revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 2 at full rated power during the upcoming Cycle 9. The proposed amendment request changes the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protective System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS 3.5.2).

To support the license amendment request for operation of Oconee Unit 2, Cycle 9, the licensee submitted, as an attachment to the application, a Duke Power Company (DPC) Report, DPC–RD–2007, "Oconee Unit 2, Cycle 9 Reload Report," dated June 1986. A summary of the Cycle 9 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 117 fuel assemblies will be reinserted similar to those previously used, and 60 fuel assemblies will be discharged and replaced with new, but substantially similar, assemblies of the Mark BZ type. As in the previous cycle, Cycle 9 will utilize gray (less-absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly-absorbing) APSRs. The use of the Mark BZ fuel assemblies and the gray APSRs was approved by the Commission's staff for use at Oconee Unit 1 during Cycle 9, in amendments dated November 23, 1984.

Date of publication of individual notice in **Federal Register:** September 11, 1986 (51 FR 32383).

Expiration date of individual notice: October 14, 1986.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 14, 1986.

Brief description of amendment: The proposed amendment would extend the surveillance interval from once per 18 months to once per fuel cycle, permanently for reactor vessel internals vent valves (RVVVs) and for Cycle 6 only for high pressure injection (HPI) and low pressure injection (LPI) pumps and valves.

Date of publication of individual notice in **Federal Register:** September 19, 1986 (51 FR 33322).

Expiration date of individual notice: October 20, 1986.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

GPU Nuclear Corporation and Jersey Central Power and Light Company, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment requests: September 5 and 9, 1986 (TSCR 153 and 147).

Brief description of amendment: The first proposed amendment would revise the footnote marked with an asterisk "*" to Table 3.1.1, Protective Instrumentation Requirements, of the Appendix A Technical Specifications (TS). When it is necessary to conduct tests and calibrations of the protective instrumentative channels in accordance with the TS, the licensee proposes that one channel may be made inoperable for up to 2 hours without tripping the channel's trip system. This is instead of the existing requirement which allows that channel to be inoperable without tripping the trip system for only up to 1 hour per month. This first amendment is in accordance with the licensee's application dated September 5, 1986, for Technical Specification Change Request (TSCR) No. 153.

The second proposed amendment would (1) increase the high drywell pressure trip setpoint from not greater than 2.4 psig to not greater than 3.5 psig and (2) add a bypass to the high flow trip of the "B" Isolation Condenser when initiating the alternate shutdown panel. The licensee is proposing to increase the value of the high drywell pressure trip setting in Table 3.1.1 of the TS. This applies to reactor scram, core spray initiation, containment spray initiation, containment isolation, automatic reactor vessel depressurization, Reactor Building isolation and the Bases in Section 3.1 of the TS for the table. For the bypass, the licensee is proposing to add a footnote "hh" stating that the trip function is bypassed upon initiation of the alternate shutdown panel to prevent a spurious trip of the "B" Isolation Condenser in the event of fire induced circuit damage. This second amendment is in accordance with the licensee's application for amendment dated September 9, 1986, for TSCR 147.

Date of publication of individual notice in **Federal Register:** September 17, 1986 (51 FR 32980).

Expiration date of individual notice: October 17, 1986.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 24, 1986, and supplemental letters dated August 4, 1986 and September 2, 1986.

Brief description of amendment: Technical Specification change to authorize an increase in the fuel enrichment limit.

Date of publication of individual notice in Federal Register: September 11, 1986 (51 FR 32383).

Expiration Date of Individual Notice: October 14, 1986.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: February 7, 1986.

Brief description of amendments: Technical Specification (TS) 3.4.1.2 is revised to require all three reactor coolant loops to be operating in Mode 3 (Hot Standby) or that the rod control system be disabled. The existing Technical Specifications require only one coolant loop to be operating in Mode 3.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment Nos.: 65 and 58.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12223).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: January 24, 1986.

Brief description of amendment: The amendment revised the Technical Specifications to delete the tabular listing of shock suppressors (snubbers) in accordance with the Commission's guidance contained in Generic Letter 84–13.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment No.: 100.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10453).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: May 21, 1986.

Brief description of amendment: The amendment revised the Technical Specification minimum level requirement for emergency feedwater (EFW) condensate storage tank T41B due to the substitution of the new seismically qualified, partially tornado protected EFW condensate storage tank T41B for the original non-seismic, non-tornado protected condensate storage tank as the primary EFW system water source.

Date of issuance: September 26, 1986.

Effective date: September 26, 1986.

Amendment No.: 101.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 30, 1986 (51 FR 27278).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Carolina Power and Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 6, 1985.

Brief description of amendment: The amendment revises the Technical Specifications by eliminating the requirement for shutting down the ventilation system in the fuel handling building on a high radiation signal, reduces the waste gas decay tank radioactivity limit, and corrects the bases for the control of explosive gas mixtures in the waste gas decay tanks. The amendment also involves changes of an editorial nature.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No. 103.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1986 (51 FR 18680).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 6, 1986.

Brief description of amendment: The license amendment formalizes a requirement to perform a quadrant power tilt surveillance at least once per seven days. This surveillance test has been performed by administrative procedure at the above frequency since 1983, and is being formalized to satisfy a staff request made during the review of the Cycle 14 reload application. The surveillance requirement provides further assurance that the input assumptions of the transient analyses are valid.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No. 84.

Facility Operating License No. DPR–61. Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24252).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 6, 1986.

Brief description of amendment: Technical Specification 6.9.1(d) required the licensee to forward Monthly Operating Reports to the Director, Office of Management Information and Program Control within the Nuclear Regulatory Commission (NRC). As a result of NRC reorganizations, the addressee presently identified in the technical specifications is no longer applicable. This license amendment revises the current addressee to be consistent with the guidance found in the Standard Technical Specifications for this area.

Date of issuance: September 29, 1986.

Effective date: September 29, 1986.

Amendment No. 85.

Facility Operating License No. DPR–61. Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30563).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 24, 1986, as supplemented June 30 and July 28, 1986.

Brief description of amendments: The amendments modify testing requirements for the diesel generators and the diesel generators' fuel oil storage requirements.

Date of issuance: September 15, 1986.

Effective date: September 15, 1986.

Amendment Nos.: 10 and 3.

Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22233).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 6, 1986.

Brief description of amendments: The amendments modify Technical Specifications to reflect the upgrade of the Reactor Coolant System Power Operated Relief Valves to safety grade for Catawba Unit 1.

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment Nos.: 11 and 4.

Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28996).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: June 6, 1986.

Brief description of amendment: The amendment permits an extension of time for the submittal of the steam generator tube rupture analysis.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No.: 12.

Facility Operating License No. NPF–35. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28996).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of applications for amendment: August 30, 1985, as supplemented December 13, 1985; July 22, 1985, as supplemented June 12, 1986; and January 10, 1986, as supplemented May 12, 1986.

Brief description of amendments: The amendments change the Technical Specifications to authorize use of the "Turbine Overspeed Reliability Assurance Program" for demonstrating operability of the turbine overspeed protection system, to increase the time during which an inoperable turbine stop valve instrument channel may be maintained in an untripped condition, and to increase the number of reactor coolant loops required to periodically be verified in operation in the hot standby mode.

Date of issuance: September 17, 1986.

Effective date: September 17, 1986.

Amendment Nos.: 62 and 43.

Facility Operating License Nos. NPF–9 and NPF–17. Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register:** December 18, 1985 (50 FR

51622); July 30, 1986 (51 FR 27283); June 18, 1986 (51 FR 22234).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 23, 1984.

Brief description of amendment: This amendment permits the operation of certain containment isolation valves when they would normally be required to be isolated, provided that a dedicated operator is posted to isolate the valve if necessary. A portion of the amendment request has been denied by the Commission. A Notice of Denial is being published separately in the **Federal Register.**

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment No.: 91.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendments: April 15, 1986.

Brief description of amendments: The amendment updates TS Tables 3.7–1 and 3.7–4 to reflect the current plant design with respect to primary containment isolation valves (PCIVs). It also revises Section 3.7.D.1 to require that all PCIVs be operable.

Date of issuance: September 25, 1986.

Effective date: September 25, 1986.

Amendment No.: 129.

Facility Operating License No. DPR–57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 12, 1984.

Brief Description of amendment: The amendment revises the DAEC Technical Specifications to incorporate changes reflecting the elimination of the differential pressure system between the drywell and the wetwell of the DAEC Containment.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment No.: 137.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50806).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 14 and May 12, 1986.

Brief description of amendment: License amendment changes Technical Specifications to add transfer switch to remote shutdown system controls, identify the plant exclusion area and gaseous effluents release points for Unit 1, revise the setpoint and instrumentation actuation values for the reactor core isolation cooling steam line high flow trip based on plant specific parameters, and makes administrative changes to correct errors.

Date of issuance: September 23, 1986.

Effective date: Changes on Technical Specification Pages 3/4 3–18, 3/4 3–88, B 3/4 3–2, 5–2, and 5–6 are effective upon issuance of the amendment. Changes on Technical Specification Page 3/4 3–71 are effective when equipment necessitating the changes on that page is installed and operable.

Amendment No. 19.

Facility Operating License No. NPF–29. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18685) and June 4, 1986 (51 FR 20371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 24, 1986.

Brief description of amendment: The amendment changes the Administrative Controls section of the Technical Specifications to clarify requirements relating to procedures.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment No.: 101.

Facility Operating License No. DPR–62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 26, 1985 as supplemented May 24, 1985, June 14, 1985, and July 3, 1986.

Brief description of amendment: The amendment changes the Technical Specifications in the following areas: (1) Standby Gas Treatment and Control Room Ventilation Systems, (2) Sample line isolation setpoint change (3)

Refueling interlocks (4) Typographical errors (5) Environmental Qualification deadline, and (6) Table of Contents correction.

Date of issuance: September 25, 1986.

Effective date: September 25, 1986.

Amendment No.: 102.

Facility Operating License No. DPR–62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31068).

The May 24, 1985 submittal was published as May 5, 1985. The July 3, 1986 submittal provided additional clarifying information and did not change the finding of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1986.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 21, 1986.

Brief description of amendments: The proposed changes would extend the expiration date for the Unit 1 Facility Operating License, DPR–42, from June 25, 2008 to August 9, 2013, and change the expiration date for the Unit 2 Facility Operating License, DPR–60, from June 25, 2008, to October 29, 2014.

Date of issuance: September 23, 1986.

Effective date: September 23, 1986.

Amendment Nos.: 79 and 72.

Facility Operating License Nos. DPR–42 and DPR–60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18688).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

NRC Project Director: George E. Lear, Director.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 23, 1986, as revised on July 17, and August 29, 1986.

Brief description of amendments: These amendments revise the testing requirements for the required emergency diesel generators in accordance with Generic Letter 84–15. Additionally, plant specific Surveillance Requirements have been revised to more accurately consider unique plant systems.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment Nos.: 60 and 30.

Facility Operating License Nos. NPF–14 and NPF–22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29008).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 23, 1985, as supplemented January 31, 1986.

Brief description of amendments: The amendments change the Technical Specifications to increase the hydrogen concentration limit downstream of the off-gas recombiners to 4 percent (volume) and decreases the number of hydrogen analyzers required to be operational during power operation to one from the currently required two. In addition a revised definition for "Alteration of the Reactor Core" is approved.

Date of issuance: September 12, 1986.

Effective date: September 12, 1986.

Amendments Nos.: 121 and 125.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47868). The January 31, 1986 submittal provided additional clarifying information. It did not change the initial determination published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 9, 1985.

Brief description of amendment: The amendment deletes the requirement from the Technical Specifications for operation of the Auxiliary Building ventilation and charcoal filter adsorber system when the fuel being moved or stored in the spent fuel storage pool had decayed at least 60 days since irradiation.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No.: 19.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12238)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: George E. Lear, Director.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 20, 1986.

Brief description of amendments: The amendments delete the maximum fuel rod weight limit of 1,766 grams of uranium from the Design Features Section of the Technical Specifications.

Date of issuance: September 15, 1986.

Effective date: September 15, 1986.

Amendment Nos.: 45 and 37.

Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29014).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County, Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 25, 1984.

Brief description of amendments: The Technical Specifications (T.S.) were changed to include the reactor vessel level instrumentation system in the Accident Monitoring T.S.

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment Nos.: 46 and 38.

Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38410).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 23, 1986.

Brief description of amendments: The amendments extend surveillance frequencies and out of service times for the Reactor Trip System.

Date of issuance: September 17, 1986.

Effective date: September 17, 1986.

Amendment Nos.: 47 and 39.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24264).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County, Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: February 7, 1986.

Brief description of amendments: These amendments change Section 6.1.C.2 of Technical Specifications for Surry Unit Nos. 1 and 2 to specifically identify the Independent/Operational Event Review (IOER) Section of the Safety Evaluation and Control (SEC) group under the Vice President-Nuclear Operations as the organizational unit which would be responsible for providing the independent review of the activities designated. Prior to these amendments the Technical Specifications stated that the SEC group would have this responsibility.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment Nos. 109 and 109.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 30, 1985 as modified August 22, 1986, wherein part of the proposed change was deleted.

Brief description of amendment: The amendment modifies portions of the Radiological Effluent Technical Specifications to make them consistent with current NRC guidance.

Date of issuance: September 23, 1986.

Effective date: September 23, 1986.

Amendment No.: 99.

Facility Operating License No. DPR–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16935).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license

amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 19, 1986, supplemented September 22, 1986.

Brief description of amendments: The amendments temporarily change Technical Specification (TS) 3/4.8.1, "A.C. Sources," to permit, for one time

only, continued at-power dual-unit operation of up to 240 hours with the swing diesel generator (No. 12) out of service. This extension of the allowed period of diesel generator inoperability has been made contingent in the Action Statements of T.S. 3/4.8.1 upon the continued operability of each unit's dedicated diesel generator, the 1000 kW portable diesel generator, and of all three offsite A.C. power supplies. The amendments shall be used only to determine and correct the cause of the carbon monoxide leakage into the No. 12 diesel generator jacket water coolant system. This extension shall expire upon completion of repairs, post-maintenance testing, and restoration to operability of the No. 12 diesel generator.

These amendments complete the Commission action initiated in our letter of September 19, 1986, "Waiver of Compliance with Technical Specification 3/4.8.1, 'A.C. Sources' " in response to the Baltimore Gas and Electric Company application of September 19, 1986.

Date of issuance: September 23, 1986.

Effective date: The license amendments are temporary and are to be used only once. These amendments became effective at 6:00 a.m. E.d.t on September 20, 1986. Upon completion of the repairs, post-maintenance testing and restoration to operability of the No. 12 diesel generator, these amendments are cancelled.

Amendment Nos.: 122 and 104.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Attorney for licensee: D.A. Brune, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of BWR Licensing.

[FR Doc. 86-22705 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon Written request copy available from: Securities and Exchange Commission Office of Consumer Affairs and Information Services Washington, DC 20549

Extension

Form SE, File No. 270-289
Form ID, File No. 270-291
Form ET, File No. 270-290
Form 15, File No. 270-279
Form S-18, File No. 270-119

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a request for extension of the following forms:

Form SE—Form for Exhibits under Edgar
Form ID—Uniform Application for Identification Numbers and Passwords
Form ET—Transmittal Form for Electronic Format Documents under Edgar
Form 15—Certification of termination of registration of a class of security under Section 12(g) or notice of suspension of duty to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934
Form S-18—Securities Act of 1933 Registration Form

Submit comments to OMB Desk Officer: Sheri Fox (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 2, 1986.

[FR Doc. 85-22623 Filed 10-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15339; (File No. 812-6472)]

Bascom Hill Balanced Fund, Inc. Application for an Order Pursuant to Section 6(c) of the Act

October 1, 1986.

Notice is hereby given that Bascom Hill Balanced Fund, Inc. (the "Fund"), 402 Gammon Place, Madison, Wisconsin 53719, filed an application ("Application") on September 5, 1986, and an amendment thereto on September 26, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Fund from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 thereunder, to the extent necessary to permit the Fund to assess a contingent deferred sales charge on certain redemptions of its shares, as described herein, and to permit the Fund to waive or apply credits against such contingent deferred sales charges under certain conditions, as described herein. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

According to the application, the Fund, registered under the Act as a diversified, open-end, management investment company, was organized under the laws of the State of Wisconsin on August 19, 1986, but has not issued any shares to the public. The Fund's shares, when issued, will represent undivided beneficial interests in the Fund's initial portfolio of assets. The application further states that the Fund is managed by its investment adviser Madison Investment Advisors, Inc. ("MIA"), a Wisconsin corporation.

MIA also acts as principal distributor of the shares of the Fund.

The Fund proposes (1) to offer its shares subject to a contingent deferred sales charge ("Charge") and (2) to institute a plan of distribution in accordance with Rule 12b-1 under the Act ("Plan"). Under the Fund's proposal, its shares would be offered and sold without the deduction of a sales load at the time of purchase. Certain redemptions of shares, however, would be subject to the charge. The proceeds of the Charge will be payable to MIA, as distributor, and will be used by MIA to defray in whole or in part costs incurred in connection with the sale and distribution of the Fund's shares.

The application represents that the Charge will be imposed only if a shareholder's redemption causes the current value of that shareholder's holdings in the Fund to fall below the total dollar amount of such shareholder's purchases of the Fund's shares within the preceding five years. No Charge will be imposed for redemptions whose amounts represent (1) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (2) increases in the value of a shareholder's holdings representing reinvestment of dividend and capital gain distributions ("Reinvestment Value") or (3) purchase payments made more than five years

prior to the redemption date ("Old Capital").

To calculate the Charge due, if any, upon a redemption, the Fund will first deduct from the dollar amount of the redemption request those amounts, if any, representing Net Appreciation Value, Reinvestment Value and Old Capital. The balance, if any, will be subject to the Charge. The amount of the Charge imposed on a shareholder would depend on the number of years that have elapsed since the shareholder made the purchase from which an amount is being redeemed, declining from 5% to 0% over a five year period. Such Charge would be 5% in the first year and decrease by 1% per year, no Charge being imposed after the fifth year. In addition, according to the application, the Fund will, in performing this calculation, assume that the purchase payments, if any, being redeemed will be from the earliest possible purchase payment.

In addition, the Fund will pay MIA, as compensation for its services, a distribution fee, approved pursuant to the provisions of Rule 12b–1 under the Act, equal to .65% on an annual basis of the value of the Fund's average daily net assets. The Fund states that this distribution fee by itself is insufficient to permit the distributor to recoup the costs of distribution of shares that are redeemed earlier than anticipated. Therefore, in their periodic review of the Fund's distribution plan under Rule 12b–1, the Fund's Directors will consider the use by the distributor of revenues raised by the Charge. As a result, in their annual review of the Plan, the Directors shall consider the interrelationship of the Charge and the distribution fee and then make whatever revision in either as they deem appropriate.

Moreover, the Fund's Directors have determined that it is in the shareholders' best interest to (1) close the Fund to new investors after five years, (2) remove the Charge for new share purchases by existing shareholders after the fifth year and (3) terminate the Plan after five years of Fund operations, all to assure that, when compared to many other funds that intend to continue distribution plans beyond their fifth year of operations, early investors will not be burdened with substantial distribution expenses related to later investors.

Under the Fund's proposal, the Charge would be waived on the following redemptions: (1) Any partial or complete redemption in connection with certain mandatory distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (2) Redemptions of shares originally purchased directly through MIA effected by (a) officers, directors, and employees of MIA and the Fund, (b) IRAs, Keogh Plans, and employee benefit plans for those officers, directors and employees, and (c) spouses, children and grandchildren of those officers, directors and employees; (3) Redemptions effected by accounts managed by the Fund Adviser; and (4) Redemptions effected by the directors of the Fund. The Fund also propose to institute a reinstatement privilege whereby a shareholder, who redeems shares of the Fund and reinvests the proceeds of that redemption in the Fund within fifteen days will receive a credit against the charge, if any, paid upon the redemption. The percentage of the Charge credited to the shareholder would be the same as the percentage of the redemption proceeds reinvested. A redeemed shareholder may exercise this privilege only once.

The Fund has submitted in its Application that all of the elements of its proposal are in the interests of Fund's shareholders and are consistent with the policies underlying the Act. Nonetheless, the Fund states that it recognizes that a contingent deferred sales charge may not comply with certain of the provisions of the Act. To avoid any possibility that questions might be raised as to the potential applicability of these provisions to the Fund, the Fund is seeking an order exempting the Fund from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 promulgated thereunder to the extent necessary to permit the Fund to institute the Charge in the manner described above.

The Fund submits that the operation of the Charge will enable the Fund's shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares than would be the case if shares were sold subject to a traditional front-end sales load. The Application asserts further that the Charge is fair to shareholders because it applies only to redemptions of amounts representing purchase payments for shares and does not apply to either increases in the value of a shareholder's account through capital appreciation or to increases representing reinvestment of dividends on distributions.

With respect to the proposed waivers of and credits against the Charge, the Fund has submitted that each wavier or credit is justified on the ground that imposing a charge in the circumstances contemplated would either be (1) unfair due to the mandatory nature of the redemption, (2) unnecessary because the funds being redeemed are being reinvested in the Funds, (3) unnecessary because the original sale of shares was effected at little or no cost to the Fund, or (4) inconsistent with the public policy granting favored tax-status to accumulations under IRAs and other qualified retirement plans.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, the the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22824 Filed 10–7–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC- 15337; (File No. 812–6358)]

Continental Mutual Funds Trust et al.; Notice of Application

October 1, 1986.

Notice is hereby given that Continental Mutual Funds Trust ("Option Fund I"), Continental Option Income Plus Fund II ("Option Fund II" (together, "Funds"), Continental Equities Corporation of America ("Continental Equities") and CIAC Asset Management Corporation ("CICAM") (collectively, "Applicants"), 180 Maiden Lane, New York, New York 10038, filed an application on April 25, 1986, and an amendemnt thereto on September 17, 1986, for an order of the Commission, pursuant to section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of section 17(a) of the Act the merger of Option Fund I and Option Fund II by means of the transaction proposed in the application and, pursuant to section 17(d) of the Act and Rule 17d–1 thereunder, permitting certain joint transactions between the Funds and affiliated persons incidental to the proposed merger. All interested persons

are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicants state that the Funds are registered, diversified, open-end, series, management investment companies, which have been organized as business trusts under the laws of the Commonwealth of Massachusetts. Each Fund's shares are currently currently classified in a single series. Applicants also state that the Funds pursue an identical investment objective which seeks high current income while minimizing the risk of captial loss resulting from market fluctuations by investing primarily in dividened-paying common stock, preferred stock convertible into common stock and exchange-traded options on common stock or stock indices, and by writing covered options. In addition, the Funds may, for hedging purposes only, invest in stock index futures and options thereon. As a secondary objective, each Fund may invest a portion of its assets pursuant to an aggressive strategy, including the use of options, to produce short-term growth and income enhancement. Applicants further state that the Funds observe the same investment policies and restrictions.

The application indicates that CICAM and Continental Equities are both New York corporations. CICAM is a wholly-owned indirect subsidiary of the Continental Corporation ("Continental"), a New York corporation. Continental Equities is also a wholly-owned indirect subsidiary of Continental, and a direct subsidiary of Commercial Life Insurance Company ("Commercial Life"), a Wisconsin insurance company and another wholly-owned direct subsidiary of Continental. Applicants state that, as of July 31, 1986, CICAM owned 11,466.646 shares or 0.79% of the outstanding shares of Option Fund I, and Commercial Life owned 10,256.410 shares or 64.19% of the outstanding shares of Option Fund II.

According to the application, CICAM acts as investment adviser and also provides the necessary office space, supplies and other facilities to Option Fund I. With respect to Option Fund II, Continental Equities has overall responsibility for managing that Fund's affairs while CICAM provides its investment advice.

Applicants indicate that Continental Equities acts as principal underwriter and distributor for both Funds; however, the Funds have different distribution arrangements. Shares of both Funds are sold through various broker-dealers with whom Continental Equities has entered into sales agreements but shares of Option Fund I are sold subject to a maximum sales laoad of 8.5% (9.29 of the amount invested), of which a certain percentage goes to Continental Equities and a certain percentage goes to the selling brokerdealer in accordance with the terms of their sales agreement. In contrast, shares of Option Fund II are sold subject to a sales load of only 2.5% (2.56% of the amount invested), the entire amount of which is payable to the selling broker-dealer. Continental Equities receives a distribution fee equal to 0.80% of Option Fund II's average daily net asset value, pursuant to a distribution plan under Rule 12b–1 of the Act, as compensation for its services in distributing and selling shares of Option Fund I. Applicants represent that Option Fund II shares are also issued subject to a contingent deferred sales charge, which applies (at a maximum rate of 4% in the first year declining to zero in the fifth year) on any redemption of shares which causes the current value of a shareholder's investment in the Continental Asset Management Funds to fall below the total dollar amount of purchase payments made by that shareholder within the preceding four years.

Applicants propose that Option Fund I, upon the satisfaction of certain terms and conditions pursuant to an Agreement and Plan of Acquisition ("Agreement"), transfer all of its assets to Option Fund II in exchange for Option Fund II's assumption of all of the liabilities of Option Fund I (with certain exceptions) and for share of Option Fund II equal in value to the value of the net assets transferred. Upon completion of this exchange Option Fund I will, in complete liquidation, distribute the Option Fund II shares it receives to its shareholders *pro rata*, thus making them shareholders of Option Fund II. Immediately prior to the effective date of that transaction, Option Fund I will declare and pay a dividend to its shareholders of all of its undistributed net investment income and net realized capital gains, net of loss carry forwards, if any.

Immediately after the effective date of the transaction, the application states that Continental Equities will, as an adjustment of the initial purchase price paid by Option Fund I shareholders, purchase for the account of each record holder of Option Fund I shares who paid a sales load for those shares Option Fund II shares having an aggregate net asset value equal to 6 percent of the price paid by each shareholder on their initial and subsequent purchases of Option Fund I shares ("Rebate"). The Rebate will only apply to Option Fund I shares held by the shareholder as of the effective time of the transaction, and does not apply to shares obtained through reinvestment of dividends. Applicants represent that this will have the effect of placing those share holders who paid the 8.5 percent sales load in substantially the same position as they would have been in if they had invested in Option Fund II initially. Option Fund II shares held by former shareholders of Option Fund I (whether acquired in exchange for Option Fund I shares or from Continental Equities) will be subject to the contingent deferred sales charge, calculated as though Option Fund II share had been purchased on the date of the transaction. The distribution fee will be payable on Option Fund II share held by former Option Fund I shareholders.

For the purposes of the transaction, the application states that the net asset value of Option Fund I and the net asset value of the Option Fund II shares will in effect be determined as of the next regular calculation of net asset value for each Fund as of the close of trading on the New York Stock Exchange and as reported to the National Association of Securities Dealers, Inc. after the effective time of the transaction in accordance with the provisions of the then effective prospectus of each Fund. The application also states that Continental Equities will pay all the expenses relating to the transaction.

According to the application, the Agreement is conditional, among other things, upon the approval of a majority (as defined by section 2(a)(42) of the Act) of Option Fund I's outstanding shares at a special shareholders' meeting. The Agreement is also conditional upon the receipt by both Funds of an opinion of the Funds' counsel, to the effect that the transfer by Option Fund I of substantially all of its assets and liabilities to Option Fund II in exchange of shares of Option Fund II,and the distribution of those Option Fund II shares to the shareholders of Option Fund I in complete liquidation of Option Fund I will constitute a tax-free reorganization within the meaning of section 368(a)(1) of the Internal Revenue code of 1954, as amended, and will not result in the recognition of gain or loss by either the Funds or the shareholders thereof. Not withstanding the approval of either Funds' shareholders, Applicants state that the Agreement may be terminated by the trustees of either Fund if circumstances should develop which, in the trustees' judgment,

would make the proposed transacation inadvisable.

According to the application, as investment companies which have the same investment adviser and principal underwriter, the Funds may be deemed to be affiliated persons under the Act. In addition, both Continental Equities and CICAM may be deemed affiliated persons of the Funds by virture of their positions as principal underwriter and investment adviser, respectively, of the Funds, and by virtue of their affiliation with Commercial Life, which as of July 31, 1986 owned 64.19% of Option Fund II. Further, Continental Equities and CICAM may be deemed to be affilated persons of each other by virtue of their being under the common control of Continental. Because of the foregoing relationships, the application represents that the proposed Agreement may be deemed to violate the provisions of section 17(a) of the Act. In addition, the Agreement may be deemed to involve a joint enterprise for the purposes of section 17(d) of the Act and Rule 17d–1 thereunder.

In support of their application, Applicants submit that the statutory standards of sections 17(b) and 17(d) of the Act and Rule 17d–1 thereunder are satisfied by the terms of the transaction. Applicants assert that the transaction is fair, reasonable and mutually beneficial to both Funds. Option Fund I shareholders will have the opportuntity to invest in a Fund with lower sales charges and what is believed to be a more effective distribution arrangement, and the Option Fund II shareholders will obtain a portfolio of assets without having to pay brokerage commissions or transaction costs. Applicants also assert that the proposed consideration is fair and reasonable because the exchange of Option Fund II shares for Option I assets will be done on the basis of the net asset value of each Fund. Applicants submit that the Rebate also represents fair consideration to the Option Fund I shareholders in that it is substantially equivalent in value to at least the amount of sales load they paid in excess of the 2.5 precent sales load they would have paid had they invested in Option Fund II initially. The Rebate is also fair to Option Fund III shareholders because Continental Equities is purchasing the shares it is using for the Rebate in cash and at net asset value.

Applicants represent that the transaction is consistent with the general purposes of the Act. Applicants state that the exemption provided in the Rule 17a–8 would have been available to Applicants were it not for the fact that Commercial Life owns more than 5% of the outstanding shares Option Fund II. Applicant note that the consent of the Option Fund I is required by the Agreement, and that the interests of all interested parties are aligned with the best interests of the shareholders.

Notice is further given that any interested persons wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of this interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, Pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22767 Filed 10–7–86; 8:45 am]

BILING CODE 8010–01–M

[Release No. IC–15336; File No. 812–6383]

Application and Opportunity for Hearing; Indianapolis Life Insurance Company, et al.

September 30, 1986.

Notice is hereby given that Indianapolis Life Insurance Company ("ILICO"), Indianapolis Life Variable Account A ("Separate Account A"), and Indianapolis Life Financial Planning Corporation (collectively, "Applicants"), at 2960 Meridian Street, P.O. Box 1230, Indianapolis, Indiana 46206, filed an application on May 19, 1986, and an amendment thereto on August 18, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), 6e–3(T)(c)(2), and 22c–1 thereunder, in connection with the issuance by ILICO of certain flexible premium variable life insurance contracts ("Contracts"). All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the complete text of those provisions that are relevent to the application.

According to the application, Separate Account A, a registered unit investment trust under the Act, will receive and invest the net premiums paid under the Contracts. The application states that a Contractowner has considerable flexibility to alter the amount, frequency, and time period over which premiums for the Contract and paid. The duration of the Contract depends upon the Contract's cash value. Subject to certain exceptions during the first two years after issuance, the Contract will lapse any time the net cash surrender value is insufficient to pay certain monthly charges and a grace period expires without a sufficient payment.

Applicants state that a premium expense charge will be deducted from each premium prior to the amount remaining being allocated to Separate Account A. The premium expense charge consists of a sales charge and a 2.25% charge to cover state premium taxes. The maximun sales charge during the first policy year is 30% of premiums paid up to the amount specified in the policy schedule ("Target Premium") and 7.5% of premiums paid in excesss of the Target Premium. The sales charge deducted from all other premiums paid in any year in 7.5% if there is no increase in face amount and no addition of a rider. Applicants state that there is a monthly deduction from cash value consisting of the cost of insurance charge, the cost of any additional benefits provided by rider, and a monthly Contract charge for administrative expenses of $4.75 per month.

Applicants further state that a Surrender Charge of up to $5.00 per $1,000 of face amount is imposed upon a complete surrender or lapse, but only in the first nine Contract years or the first nine Contract years following an increase in face amount. The Surrender Charge is based on the Contract year of the surrender or lapse (or the number of years since the increase in face amount) and the insured's age at issue (or attained age at the time of the increase). If an increase in the face amount is requested and approved, separate additional Surrender Charges will apply to the increased face amount.

According to the application, a partial Surrender Charge is imposed upon a partial withdrawal. The charge is in proportion to the Surrender Charge that would be imposed upon a complete

surrender in the same ratio as the amount withdrawn bears to the cash value. When a partial withdrawal is made, future Surrender Charges are reduced in the same proportion. However, the minimum charge for partial withdrawals is the smaller of 2% of the amount withdrawn or $25.00. When this minimum charge applies, the additional amount partially compensates for the cost of processing the withdrawal. Applicants represent that such a charge is cost-based without any anticipated element of profit to ILICO.

Applicants note that the Surrender Charge is deducted to cover the costs of processing applications, conducting medical examinations, determining insurability and the insured's risk class, and establishing records relating to the Contracts. Applicants point out, however, that this charge will not be assessed upon issuance of the Contract, nor will it ever be deducted from any death benefit payable under the Contracts. As noted above, it will be deducted only if the Contract is surrendered or lapese in the first nine Contract years or in the nine Contract years following an increase in face amount and upon partial withdrawals.

Applicants submit that imposition of the administrative charge for issuance expenses in the form of a contingent deferred charge is more favorable than a charge that is deducted entirely from premiums or from cash value in the first Contract year, which are more conventional ways of imposing this charge. First, Applicants argue that the amount of the Contractowner's investment in the separate account is not reduced as it is when this charge is taken in full in the first Contract year. Second, Applicants represent that the total amount charged to any Contractowner is no greater than if this charge is taken in full in the first Contract year. There is no charge for Contractowners who do not lapse or surrender during the first nine Contract years, and for Contractowners who lapse or surrender in Contract years six through nine the charge is reduced. Third, even Contractowners who lapse or surrender within the first five years are advantaged because the cost of insurance charges deducted monthly from the amounts credited to them in the separate account will be lower than they would have been had this administrative charge for issuance expenses been deducted in full during the first year. Furthermore, every Contractowner receives insurance protection without incurring this administrative charge prior to surrender or lapse.

ILICO represents that the amount of the charge is the same as it would have been if it was designed as a front-end or periodic charge. In particular, ILICO represents that this charge does not take into account the time value of money (which would increase the charge to factor in the investment cost of ILICO of deferring the charge) or the fact that not all Contractowners will surrender or lapse their Contracts in the first nine Contract years (which would increase the charge for those surrendering or lapsing in those years to cover the costs attributable to Contractowners who do not surrender or lapse in those years). ILICO also submits that granting exemptive relief for the Surrender Charge for the reasons described above is supported by relevant Commission precedent which is cited in the application.

Accordingly, Applicants request an exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), and 22c-2 to the extent necessary to permit the administrative charge to be deducted upon surrender or lapse of the Contract, in the manner described above.

Applicants state that the waiver of monthly deductions rider ("Rider") provides that the monthly deductions will not be made against the Contract's cash value if the insured becomes totally disabled and the disability contineus for four months. The disability must start after the insured's fifth birthday and before the Contract anniversary nearest the insured's 65th birthday. If the disability begins on or after the Contract anniversary nearest the insured's 60th birthday, the monthly deductions will be waived only up to the policy anniversary nearest the insured's 70th birthday.

Applicants state that the Rider may be deemed not to meet the definition of "incidental insurance benefits," as defined in Rule 6e-3(T)(c)(2). The application states that Rule 6e-3(T)(c)(2) defines "incidental insurance benefits," in pertinent part, as insurance benefits "which do not vary in amount in accordance with the investment experience of the separate account" and that Rule 6e-3(T)(c)(4)(vii) defines "sales load" to exclude any "additional charge assessed specifically for any incidental insurance benefits." Therefore, according to the application, if the waiver of monthly deduction benefit falls within the meaning of "incidental insurance benefits" as defined in Rule 6e-3(T)(c)(2), the charge for the Rider falls outside the definition of sales load in Rule 6e-3(T)(c)(4)(vii). On the other hand, if the Rider falls outside the definition of "incidental insurance benefits" in Rule 6e-3(T)(c)(2), the charge for the Rider may be deemed to be "sales load."

Applicants argue that the Rider's benefit, *i.e.*, the waiver of the monthly deduction, is fixed benefit in its most significant respects. Applicants state that the part of the monthly deduction that is waived, *i.e.*, the monthly Contract charge, is fixed in amount; the application argues that the benefit waives the entire monthly deduction, and therefore the benefit to the Contractowner is fixed to the extent that the Contractowner pays no charges, regardless of how much the cash value and the net amount at risk vary. Applicants submit that this represents a fixed benefit so far as the Contractowner is concerned. Applicants also state that the Rider possesses no cash value of its own, *i.e.*, no cash value separate and distinguishable from the cash value for the Contract as a whole.

Applicants submit that Rule 6e-3(T)(c)(2) provides that incidental insurance benefits "include, but are not limited to, . . . disability income benefits." Applicants state that the Rider's benefit operates to keep a Contract in force under circumstances where total and permanent disability could jeopardize the continued payment of premiums, and, indirectly, payment of the monthly charges, required to keep the Contract from lapsing. It follows, according to the application, that, in economic reality, the Rider's benefit is a type of disability income benefit specified as an incidental insurance benefit by Rule 6e-3(T)(c)(2).

Applicants also submit that it is not reasonable to assume that the commission, in adopting Rule 6e-3(T), intended that the charge for the type of rider at issue here be deemed to be "sales load." In this regard, Applicants assert that the benefit of weiver of charges upon disability serves a bona fide insurance objective that is integrally related to, and an incidental part of, the insurance aspects of a flexible premium variable life insurance contract, and that an issuing insurance company must impose a charge for the benefit provided and risks assumed by the insurer, and that such a charge clearly is not for sales or promotional expenses.

Applicants also argue that under Rule 6e-2, charges imposed under scheduled premium contracts for the type of rider at issue here have been deducted from gross premiums prior to calculation of

the sales load and allocation to a separate account, and that, therefore, such charges have not been construed to constitute "sales load" within the meaning of Rule 6e–2(c)(4). Applicants submit that deducting charges for such a rider from premium payments under a flexible premium contract is impractical because premium payments are not required to be made on a regular basis. Finally, Applicants note that the Commission has issued several orders granting the identical relief requested herein (some of which are cited in the application).

On the basis of the foregoing, Applicants request an exemption from the definition of "incidental insurance benefits" in Rule 6e–3(T)(c)(2) to the extent necessary to permit the charge for the Rider not to be deemed to be "sales load."

Applicants respectfully submit, for all the reasons stated herein, that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and therefore their exemptive requests meet the standards set out in Section 6(c) of the Act and should be granted.

Applicants represent in connection with the relief requested that, if Rule 6e–3(T) is amended or Rule 6e–3 adopted, they either will comply with the rule as amended or adopted or seek additional appropriate exemptive relief.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22766 Filed 10–7–86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–15523

LTV Corp.; Application and Opportunity for Hearing

September 30, 1986.

Notice is hereby given that LTV Corporation (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of The Connecticut National Bank ('CNB") under three indentures of the Applicant heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in pertinent part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of said subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that: 1. The Applicant has outstanding its 7–½% Subordinated Debentures due 1993 and 1994 (the "1969 7–½% Debentures") issued under an indenture dated as of May 15, 1969 (the "1969 Indenture"), between the Applicant, as successor by merger to Lykes Corporation (formerly Lykes-Youngstown Corporation, hereinafter "Lykes") and Morgan Guaranty Trust Company of New York ("Morgan"), as successor trustee to Marine Midland Bank (formerly Marine Midland Grace Trust Company of New York, hereinafter "Marine Midland"), as Trustee, which was theretofore qualified under the Act. The 1969 7–½% debentures were registered under the Securities Act of 1933.

2. The Applicant has outstanding 7–½% Subordinated Debentures due June 1, 1993 and June 1, 1994 (the "1970 7-½% Debentrues") issued under an indenture dated as of July 15, 1970 (the "1970 Indenture"), between the Applicant as successor by merger to Lykes, and Morgan, as successor trustee to Marine Midland, as Trustee, which was heretofore qualified under the Act. The 1970 7–½% Debentures were registered under the Securities Act of 1933.

3. The Applicant has outstanding 11% Subordinated Debentures due in the year 2000 (the "11% Debentures") issued under an indenture dated as of December 15, 1974 (the "1974 Indenture"), between the Applicant, as successor by merger to Lykes, and Morgan, as successor trustee to Chemical Bank, as Trustee, which was heretofore qualified under the Act. The 11% Debentures were registered under the Securities Act of 1933.

4. On June 13, 1986, CNB was appointed as successor trustee to Morgan under the 1969 Indenture, the 1970 Indenture and the 1974 Indenture (collectively the "Indentures").

5. The Applicant is in default under each of the indentures by virtue of having filed on July 17, 1986, a petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

6. The Applicant's obligations under the Indentures and the 1969 7½% Debentures, the 1970 7½% Debentures and the 11% Debentures (collectively the "Debentures") issued thereunder are wholly unsecured and rank *pari passu inter se.*

7. In the opinion of the Applicant, the provisions of the Indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the Debentures issued under the Indentures to disqualify CNB from acting as successor trustee under any of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by its application, and all rights to specify procedures under the Rules of Practice of the Commission with the respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application File No. 22–15523, which is a public document on file in the offices of the Commission at the Public Reference

Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice if further given that any interested person may, not later than October 26, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the division of Corporation Finance, pursuant to delegated authority,

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-22825 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15338 (File No. 812-6345)]

Ryan Mortgage Acceptance Corporation IV; Notice of Application

October 1, 1986.

Notice is hereby given that Ryan Mortgage Acceptance Corporation IV ("Applicant"), 111 Ryan Court, Pittsburgh, Pennsylvania 15230, filed an application on April 15, 1986 and an amendment thereto on July 16, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting if from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

According to the application, Applicant, a wholly-owned limited purpose finance subsidiary of Ryan Financial Services, Inc., ("Company"), which is, in turn, a wholly-owned mortgage banking subsidiary of Ryan Homes, Inc., was organized for the purpose of providing a structure through which homebuilders and financial institutions can obtain a source of funds for the financing of long-term residential mortgages. Applicant states that it may issue additional equity securities, but represents that such equity securities would be issued only to and retained by its parent. Applicant further represents that the only debt securities it will issue will be Mortgage-Collaterzlized Bonds issued in series from having the following characteristics:

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the mortgage-related collateral (collectively, "Mortgage Collateral") securing the Bonds will be limited to: (i) Mortgages constituting first liens on single (one-to-four) family residences ("Mortgate Loans") and (ii) mortgage certificates guaranteed by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") (collectively, "Mortgage Certificates").[1]

3. The Applicant will have a right to substitute other Mortgage Collateral for the initial Mortgage Collateral securing a series of Bonds only if the substituted Mortgage Collatral: (i) Is of equal or better quality than the Mortgage Collateral replaced; (ii) has similar payment terms and cash flows as the Mortgage Collateral replaced; (iii) is insured or guaranteed at least to the same extent as the Mortgage Collateral replaced; and (iv) meets the conditions set forth in paragraphs 2, 4 and 6. Substitution for Mortgage Loans is further limited as follows: Eligible Mortgage Certificates may be substituted for Mortgage Loans, but new Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In addition, new Mortgage Collateral may not be substituted for more than 20% of the agreegate face amount of the Mortgage Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

[1] Some of the Mortgage Collateral will be Mortgage Collateral pledged to the Applicant as security to secure notes ("Notes") of other homebuilders or financial institutions. Such Mortgage Collateral is in turn pledged by the Applicant to secure a series of Bonds. In addition to Mortgage Collateral, a series of Bonds may also be secured by cash, eligible investments satisfactory to the rating agency rating such series or letters of credit held in reserve funds intended to compensate for certain interest shortfalls.

Notes may be substituted for the initial Notes securing a series of Bonds only if the substitution of the Mortgage Collateral securing such Notes would be permitted under the above conditions, including the conditions as to the aggregate amount of Mortgage Collateral for which substitution may be made.

4. All Mortgage Collateral, reserve funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the trustee or on behalf of the trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant, or of any master servicer or originating lender of any Mortgage Loan that is pledged as Bond Collateral. (If there is no master servicer, the custodian may not be an affiliate of any servicer). The trustee will be granted a first priority perfected security interest in, or lien on, all Bond Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. The master servicer of Mortgae Loans pledged to secure a series of Bonds will not be an affiliate of the trustee. If there is no master servicer for Mortgage Loans pledged to secure a series of Bonds, no servicer of those Mortgage Loans will be an affiliate of the trusee. In addition, any master servicer and servicer of a Mortgage Loan will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of Mortgage Loans will obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by the Federal Housing Administration, guaranteed by the Veterans' Administration or eligible for purchase by FNMA or FHLMC.

7. At least annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the trustee.

Applicant contends that it is not the type of entity that the Act was intended to regulate and that its limited activities do not require the protection of the Act. According to the application, since the Bonds will have fixed interest rates, will not be convertible into other obligations, will not be redeemable by bondholders, and will not otherwise grant bondholders an equity interest in the Mortgage Collateral, the Bonds do not raise problems of inequitable pricing, excessive or hidden sales loads or churning of accounts. Applicant argues that the interests of investors will be adequately protected by the disclosure and regulatory provisions of the securities laws and by the self-amortizing nature of the Bonds without the additional safeguards of the Act. Also, action by the Applicant after issuance of a series cannot affect the timely payment of the Bonds of that series, since (i) the Mortgage Collateral will be in the trustee's possession, (ii) the indenture pursuant to which the bonds are issued permits only extermely limited investment decisions by the Applicant or the trustee, (iii) substitution of Mortgage Collateral is limited, as set forth above, in such a manner that a subtitution would not affect timely payment of the Bonds, and (iv) distributions received on the Mortgage Collateral will be paid directly to the trustee and will generate sufficient income to meet Applicant's obligations to the bondholders. Applicant further submits that there are strong public policy reasons for granting an exemptive order in that its activities will supply capital to the real estate and mortgage markets and thereby facilitate the financing of housing, which activities are consistent with public policy expressed by Congress in enacting the Secondary Mortgage Market Enhancement Act of 1984.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 23, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22768 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23670; File No. SR-CBOE-86-29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Order Size Eligibility for a Retail Automatic System

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Commission on August 19, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to revise the definition of orders eligible for its Retail Automatic Execution System ("RAES") in the Standard and Poor's 500 Index option class ("SPX"). The rule proposal was published for comment in Securities Exchange Act Release No. 23545 (August 21, 1986), 51 FR 30602. No comments were received.

RAES is a program which permits firms participating in the Exchange's Order Routing System to route customer orders of a certain size to the Exchange for automatic execution at the best bid or offer displayed in the System at the time of order entry. RAES is currently operating in SPX on a six-month pilot basis.[1] All incoming RAES orders are executed automatically against participating market maker who are assigned a RAES transaction in rotation. If a RAES transaction occurs at the price of an order on the limit order book the market maker on the contra side of the RAES transaction will be required to trade with the booked limit order up to the number of contracts assigned to him on RAES.[2] As initially proposed, only market orders up to 10 contracts in SPX series selected for inclusion in the system are eligible for RAES execution. The CBOE first expanded SPX order eligibility to include in the RAES pilot marketable limit orders up to 10 contracts to conform the RAES SPX pilot with the RAES programs for other options classes.[3]

The CBOE now proposes to permit market or marketable limit orders up to ninety-nine contracts in SPX options series on the System to be eligible for a RAES execution. The Exchange proposes to retain the discretion to determine the size and type of orders eligible for RAES and the particular options series which will be included on the System. Changes in options order eligibility criteria will be announced as they occur. Also, announcements about the particular options series selected for inclusion in the System will be made daily.[4]

The CBOE states in its proposal that increasing order size eligibility will permit the Exchange to experiment with the System's operational capabilities and to assess its impact on trading and order routing patterns in SPX. The CBOE also maintains that increased order size will be attractive to SPX customers because of the substantial institutional participation in the market. The CBOE represents that this proposal is consistent with the Act because RAES will improve trading and operational efficiencies in SPX.

Permitting experimentation with the automatic execution of larger SPX orders for the duration of the RAES SPX pilot seems appropriate particularly in view of the CBOE's representations about the institutional nature of the SPX market. Accordingly, the Commission finds that the proposal is consistent with the Act because it makes available to larger orders the execution efficiences of automatic execution, and provides the opportunity to assess the market impact

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[1] The Commission approved the RAES SPX pilot in Securities Exchange Act Release No. 23590 (September 4, 1986), 51 FR 32709 (File Nos. SR-CBOE-86-14, 86-28 and 86-29) ("RAES SPX Approval Order"). The pilot commenced on September 5, 1986. The Commission also approved CBOE proposals to operate RAES in the Standard and Poor's 100 index option class ("OEX") on a permanent basis and to pilot RAES in six equity options classes for as six-month period. *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788 (File Nos. SR-CBOE-85-32 and 85-16). RAES in OEX operates as an exception to the Exchange priority rules, whereas the RAES equity pilot is designed to protect limit order priority, except in one of the pilot options classes, IBM, and in unusual market conditions.

[2] The Exchange may suspend book participation in RAES in the event that the Exchange's Vice Chairman and President (or their designees) determine it is impossible to maintain normal trading operations and protect book priority. The RAES SPX pilot operates in the same manner as the RAES equity pilot (with the exception of IBM) with respect to book priority protection. *See supra* note 1.

[3] The CBOE proposed to include marketable limit orders in the SPX pilot in SR-CBOE-86-29. The Commission granted accelerated approval of this aspect of the filing. *See* RAES SPX Approval Order, *supra* note 1.

[4] If the System is not in operation, all eligible orders will be executed as they are currently in order options classes.

of including additional volume in an automatic execution system.[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22764 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24205]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 2, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 27, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidvit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[5] The Commission expects that the CBOE will provide it with appropriate notice of any RAES SPX order size eligibility changes for the duration of the RAES SPX pilot. Also, in the event this proposal is approved on a permanent basis, all changes in RAES SPX order size eligibility up to ninety-nine contracts should be filed with the Commission as a proposed rule change under section 19(b)(3)(A) of the Act.

Consolidated Natural Gas Company (70-7286)

Consolidated Natural Gas Company ("CNG"), a registered holding company, Four Gateway Center, Pittsburg, Pennsylvania 15222, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

CNG proposes to purchase on the open market up to four million shares, or approximately 5% of its outstanding common stock, $2.75 par value, by December 31, 1988, subject to extension. Funds for the purchase of the common stock will be obtained from internally generated cash and from financing authorized by the Commission. The repurchased shares will be held as treasury stock. Consolidated also seeks authorization to reissue the treasury stock for general corporate purposes and in connection with various employee benefit plans, through December 31, 1988, subject to extension.

Consolidated Electric Cooperative Association, Inc. et al. (70-7301)

Consolidated Electric Cooperative Association, Inc. ("Cooperative"), P.O. Box 540, Mexico, Missouri 65265, has filed an application for exemption pursuant to section 3(a)(1) of the Act.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a non-profit rural electric cooperative which services approximately 6,200 retail customers. It operations are confined to Audrain, Monroe, Montgomery, Pike, Ralls and Callaway counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 36 AUDRAIN. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Consolidated Electric Service Company ("Service"), a Missouri corporation which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1500 persons. Cooperative constructed electric facilities in areas of Audrain, Monroe, Montgomery, Pike, Ralls and Callaway countries in Missouri which were annexed by municipalities with populations exceeding 1500. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law ton serve Cooperative members in these annexed areas. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the areas annexed by municipalities. Service will generate no power. Cooperative will be its sole power supplier. All of its scales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect for their own members those persons who serve on the Board of Directors of Cooperative. This Board elects, in turn, the persons who serve on the Board of Directors of Service. The election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Boone Electric Cooperative, et al. (70-7302)

Boone Electric Cooperative ("Boone"), P.O. Box 797, Columbia Missouri 65205, has filed an application for exemption pursuant to Section 3(a)(1) of the Act.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a non-profit rural electric cooperative which serves approximately 18,000 retail customers. Its operations are confined to Boone, Audrain, Monroe, Randolph and Callaway counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 19 BOONE. It sells electric energy to its consumer members. Cooperative generates no power of is own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Boone Electric Service Company ("Service"), a Missouri corporation, which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1500 persons. Cooperative constructed electric facilities in areas of Boone, Audrain, Monroe, Randolph and Callaway counties in Missouri which were annexed by municipalities with populations exceeding 1500. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members in these areas. Cooperative intends,

subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will generate no power. Cooperative will be the sole power supplier of Service, which will make all of its sales to consumers with the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the Board of Directors of Cooperative. This Board elects in turn the persons who serve on the Board of Directors of Service. The election of directors and the management of the affairs of both Cooperative and Service and effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22826 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collections under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the proposed information collections and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission

Title of Information Collection: Visitor Use Estimation Survey

Frequency of Use: On Occasion

Type if Affected Public: Individuals

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 30,000

Estimated Total Annual Burden Hours: 990

Need For and Use of Information: The data collected in this survey will be combined with traffic counter calibration information for economic impact analysis relating to the Public Area Recreational Visitors Survey (PARVS) data by Land Between the Lakes staff for program, maintenance, and development decisions.

Type of Request: Renewal of previously approved information collection

Title of Information Collection: TVA Fishing Census

Frequency of Use: On Occasion

Type Affected Public: Individuals

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 24,000

Estimated Total Annual Burden Hours: 2,400

Need For and Use of Information: Creel surveys are conducted to provide benchmark information for better aquatic resource managment, and assessment of benefits and impacts on the aquatic resources which result from reservoir operations and shoreline development activities.

Dated: October 1, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-22811 Filed 10-7-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 38883]

Pan American World Airways Employee Protection Program Investigation; Hearing

Notice is hereby given that the hearing in the above-entitled proceeding will commence on October 20, 1986, at 10:00 a.m. (local time), Hearing Room 2 (lower level), 2120 L Street, NW, Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, Ooctober 2, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-22787 Filed 10-7-86;8:45 am]

BILLING CODE 4910-62-M

[Docket No. 44380]

Seattle/Portland-Japan Service Review Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-2142.

Dated Washington, DC, October 3, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-22788 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

[Docket No. IRA-38]

Citizens Against Nuclear Trucking; Application for Inconsistency Ruling

Correction

In FR Doc. 86-21934 beginning on page 34524 in the issue of Monday, September 29, 1986, make the following correction: On page 34524, in the second column, in the third line, after "preempted" insert "under section 112(a) of the HMTA. The Connecticut statute and those regulations"

BILLING CODE 1505-01-M

[Inconsistency Ruling No. IR-17; Docket No. IRA-34]

Illinois Fee on Transportation of Spent Nuclear Fuel; Invitation To Comment on Appeal of IR-17

Correction

In FR Doc. 86-21935 beginning on page 34527 in the issue of Monday, September 29, 1986, make the following corrections:

1. On page 34527, in the first column, in the Summary, in the eighteenth line, "IB-17 Docket No. IRA-34)" should read "IR-17 (Docket No. IRA-34)".

2. On page 34528, in the second column, in the sixth line, "duplicate" should read "duplicative".

BILLING CODE 1505-01-M

Urban Mass Transportation Administration

Buy American Requirements; Permanent Waiver

AGENCY: Urban Mass Trasportation Administration, DOT.

SUMMARY: This notice makes a waiver for microcomputers from the Buy America requirements of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424) permanent. Previously, the Urban Mass Transportation Administration (UMTA) granted the waiver on a temporary basis, and sought comments as to whether a permanent waiver should be granted.

DATE: The permanent waiver is in effect upon publication of this notice. The temporary waiver, granted by UMTA on May 2, 1985, continues until that time.

FOR FUTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4063.

SUPPLEMENTARY INFORMATION: On January 9, 1985, in response to a request from the American Association of State Highway and Transportation Officials (AASHTO) indicating that several UMTA grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs, UMTA solicited comments from interested parties. (50 FR 1156). Section 165(b)(2) of the STAA provides that a waiver may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Under UMTA regulations, the item being procured is presumed to be unavailable if no responsive bid is received which will provide a domestically produced product.

Based upon its review and analysis of the 22 comments received, UMTA granted the requested waiver for a one year period. (50 FR 18760, May 2, 1985). When the period expired, UMTA extended the waiver termporarily, again soliciting comments to see if the domestic market for microcomputers had changed. (51 FR 19653, May 30, 1986). In response to this latest solicitation, UMTA received three comments from transit agencies and one from a foreign supplier. All four commenters cited several reasons why they were in favor of making the waiver permanent. First, although new technology had increased the availability of hardware and software components, many product component (microchips) are still made and assembled abroad. Furthermore, it is difficult to estimate when, if ever, microcomputer component manufacturing will be relocated to the United States, since the computer industry is becoming increasingly multinational in nature.

Based on this knowledge gained from commenters who have practical experience in the field and other sources, UMTA has decided to make the waiver for microcomputers permanent.

UMTA, of course, reserves the right to reassess the need for a permanent waiver if, for instance, international market conditions change.

As an example, there was a recent agreement between the United States and Japan on several semiconductor trade disputes. On July 31, 1986, Japan and the United States entered into a five year agreement to, among other things, help prevent the dumping of semiconductors by Japanese manufacturers to below-cost prices in the U.S. and other countries. Additionally, the Japanese Government is to establish an organization to aid foreign semiconductor producers (such as those in the United States) to increase sales in the Japanese market. While this agreement should go far in enhancing fair trade in the semiconductor (and thus microchip) industry, UMTA realizes that domestic availabilty of microchips will not be immediately increased; therefore, a need for a waiver from the Buy America requirements still exists.

Issued on: October 3, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 22786 Filed 10–7–86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW, Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No. 1512–0142
Form No. ATF F 2734 (5100.25)
Type of Review: Extension
Title: Specific Export Bond-Distilled Spirits or Wine
OMB No. 1512–0198
Form No. ATF REC 5110/03—ATF F 5110.28
Type of Review: Revision
Title: Distilled Spirits Plant (DSP) Processing Records and Report

Clearance Officer: Robert G. Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–22761 Filed 10–7–85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW, Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No. 1512–0059
Form No. ATF F 5120.29 (698 supplemental)
Type of Review: Extension
Title: Bond Wineries-Formular and Process for Wine and General Applications, Letterhead Applications Notices Relating to Operations
OMB No. 1512–0482
Form No. AFT Reporting Requirement 5100/1
Type of Review: Revision

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act

Clearance Officer: Robert G. Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB No. 1510–0050
Form No. None
Type of Review: Extension
Title: Financial Institution and Vendor Account Identification Data

Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB No. 1545–0086
Form No. IRS Form 1040C
Type of Review: Revision
Title: U.S. Departing Alien Income Tax Return
OMB No. 1545–0087
Form No. IRS Forms 1040–ES, 1040–ES (NR), 1040–ES (Espanol), and 1040–ES (NMI)
Type of Review: Revision
Title: Estimated Tax for Individuals (4 forms); (1) U.S. Citizens and Residents, (2) for Nonresident Aliens, (3) for Use in Puerto Rico (in Spanish), and (4) for Use in Northern Mariana Islands

OMB No. 1545–0142
Form No. IRS Form 2220
Type of Review: Revision
Title: Underpayment of Estimated Tax by Corporation
OMB No. 1545–0231
Form No. IRS Form 6478
Type of Review: Revision
Title: Credit for Alcohol Used as Fuel
OMB No. 1545–0795
Form No. IRS Form 8233
Type of Review: Revision
Title: Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
OMB No. 1545–0823
Form No. None
Type of Review: Extension
Title: LR–221–83 Final, Indian Tribal Governments Treated as States for Certain Purposes
OMB No. 1545–0895
Form No. IRS Form 3800
Type of Review: Revision
Title: General business Credit

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 85–22762 Filed 10–7–85; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Meeting

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 54 national voluntary organizations, will be held at the Sheraton Washington Hotel, Washington, DC, on November 20 through November 23, 1986.

Registration of the Conferees and orientation of new Committee members will be held beginning at 2:00 p.m. on November 20, 1986. The Committee will officially convene with the Opening Session at 9:00 a.m., November 21, 1986, and will conclude at 12 noon, November 23, 1986.

The purposes of the meeting are to instruct Committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the Committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program. In addition, the Committee will be celebrating its 40th anniversary.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Veterans Administration, 810 Vermont Avenue, NW Washington, DC 20420, Telephone (202) 653–2165.

Dated: September 30, 1986.

By the direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–22778 Filed 10–7–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:56 p.m. on Thursday, October 2, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Missouri Farmers Bank, Maitland, Missouri, Mound City, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, October 2, 1986; (2) accept the bid for the transaction submitted by United Missouri Bank of St. Joseph, St. Joseph, Missouri an insured State nonmember bank; (3) approve the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Missouri Farmers Bank, Maitland, Missouri, Mound City, Missouri, and for consent to establish the two offices of Missouri Farmers Bank, Maitland, Missouri, as facilities of United Missouri Bank of St. Joseph; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) adopt: (1) A resolution (a) making funds available for the payment of insured deposits made in Century National Bank, Harris County (P.O. Houston), Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, October 2, 1986; (b) accepting the bid of Sterling Bank—Willowbrook, Houston, Texas, a newly-chartered State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Sterling Bank—Willowbrook, Houston, Texas, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the applications of Sterling Bank—Willowbrook, Houston, Texas, for Federal deposit insurance, and for consent to purchase certain assets of and assume the liability to pay deposits made in Century National Bank, Harris County (P.O. Houston), Texas.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 6:05 p.m. and at 8:01 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Frontier National Bank, Vista, California, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, October 2, 1986; (2) accepted the bid for the transaction submitted by Rancho Vista National Bank, Vista, California; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-22912 Filed 10-6-86; 2:56 pm]

BILLING CODE 6417-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 14, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Board's internal audit function.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22818 Filed 10-3-86; 4:06 pm]

BILLING CODE 6210-01-M

3

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, October 28 from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee will be held on Tuesday, October 28 from 9:00 a.m. to 5:30 p.m., on Wednesday, October 29 from 9:00 a.m. to 5:30 p.m., and on Thursday, October 30 from 8:00 a.m. to 4:40 p.m.

PLACE: Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99510.

STATUS: The executive session will be closed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss and consider a broad range of issues bearing on marine mammals in Alaska, the International Whaling Commission, net entanglement, permits, the coordination of research and collection activities, the tuna-porpoise issue, and the West Indian manatee.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653–6237.

Dated: October 3, 1986.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 86–22846 Filed 10–6–86; 9:07 am]

BILLING CODE 6820–31–M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 6, 13, 20 and 27, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 6

Thursday, October 9

10:00 a.m.
Briefing on Advanced Reactor Designs (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Review of ALAB–840 (In the Matter of Philadelphia Electric Company)—Limerick (Tentative)
b. Proposed Orders Establishing Informal Hearings *re* Denials of Materials License Applications of Perf-Master, Inc. and Radiology Ultrasound Nuclear Consultants, P.A. (Tentative)

Week of October 13

Tentative

Thursday, October 16

1:00 p.m.
Discussion/Possible Vote on Kerr-McGee Sequoyah Facility (Public Meeting)

3:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 17

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

Week of October 20

Tentative

Thursday, October 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 27

Tentative

Wednesday, October 29

2:30 p.m.
Briefing on Near Term Operating Licenses (NTOLs) (Public Meeting)

Thursday, October 30

2:00 p.m.
Meeting with Members of INPO Plant Managers Course (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Withdrawal of Final Rule—Effects of Earthquakes on Emergency Planning" (Public Meeting) was held on October 2.

To verify the status of meetings call (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

October 2, 1986.

[FR Doc. 85–22844 Filed 10–3–85; 4:45 am]

BILLING CODE 7590–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council will also hold an executive session to discuss civil litigation and personnel matters.

TIME AND DATE: October 15–16, 1986, 10:00 a.m.

PLACE: University Inn, Moscow, Idaho.

MATTERS TO BE CONSIDERED:

1. Public Comment and Council Deliberation on a Draft Position on a Process and Criterion for Determining Consistency under the Resource Acquisition Provisions of the Northwest Power Act (section 6(c)).
2. Public Comment and Council Action on Issue Paper on Alternatives Available for Responding to the Petition of Senator Al Williams to Conduct a Reassessment of the Preservation of WNP–1 and 3.
3. Council Action on Umatilla Steelhead Hatchery Preliminary Design.
4. Presentation and Public Comment on Bonneville Power Administration Cost-Effectiveness Analysis regarding the Model Conservation Standards.
5. Discussion of Petitions To Enter Rulemaking To Amend Model Conservation Standards. (Copies of petitions filed by the Northwest Conservation Act Coalition and CASE are available upon request by calling Judy Allender at the number listed below.
6. Council Business.
7. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–22886 Filed 10–6–86; 12:02 pm]

BILLING CODE 0000–00–M

Federal Register

Wednesday
October 8, 1986

Part II

Small Business Administration

13 CFR Part 124

Minority Small Business and Capital Ownership Development Assistance; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its regulations covering the section 8(a) and 7(j) programs. These programs were established by virtue of sections 8(a) and 7(j) of the Small Business Act, 15 U.S.C. 637(a) and 636(j). Taken as a whole, these regulations implement the Minority Small Business and Capital Ownership Development Program of SBA, a program which is intended to provide contractual and management assistance to concerns owned and controlled by socially and economically disadvantaged persons. In some instances, these regulations alter existing regulations covering the section 8(a) program. In other instances, these regulations add additional provisions to the existing regulations. Finally, in certain other instances the existing regulations would not be either altered or added to by these regulations. It should be noted that the regulations follow a numbering scheme different than that of the existing regulations. SBA believes that this scheme is easier to follow than in the existing regulations. The renumbering of the regulations has not resulted in the elimination of any significant provisions of the existing regulations.

DATES: These regulations are effective November 24, 1986.

ADDRESS: Written comments should be addressed to Docket Clerk, Office of General Counsel, Room 700, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edward C. Neal, (202) 653–6524.

SUPPLEMENTARY INFORMATION:

General Overview

The Small Business Administration (SBA) is hereby amending its regulations covering the section 8(a) and 7(j) programs. These programs were established by virtue of sections 8(a) and 7(j) of the Small Business Act, 15 U.S.C. 637(a) and 636(j). Taken as a whole, these regulations implement the Minority Small Business and Capital Ownership Development Program of SBA. On December 22, 1983, at 48 FR 56686, SBA published proposed regulations governing the Minority Small Business and Capital Ownership Development Program. The public was afforded 60 days to comment on that proposal, and SBA extended that comment period by an additional 30 days thereafter (see 49 FR 6103). SBA received 322 public comments in response to that publication. In addition, SBA consulted with members and staff persons of the Senate and House of Representatives Small Business Committees regarding that proposal, and conducted numerous discussions with representatives of the minority business community relative to that proposal. A detailed analysis of the nature and substance of this public participation has been made a part of this Supplementary Material.

SBA has now evaluated all of the public participation, and these regulations represent the results of that evaluation. In some instances, these regulations alter existing regulations covering the section 8(a) program. In other instances these regulations add additional provisions to the existing regulations. Finally, in certain other instances the previously existent regulations are not either altered or added to by these regulations. This section of explanatory information will highlight instances where significant changes are made or where the present regulatory scheme is unaltered. In addition, it will explain how SBA has chosen to deal with sections of the proposed regulations on which significant public comment was received. It should be noted that these regulations follow a numbering scheme different than that of the preexistent regulations. SBA believes that this scheme is easier to follow than that presently existent in its regulations. The renumbering of the regulations has not resulted in the elimination of any of the significant provisions of the existent regulations.

Secions 124.1 through 124.3 of these regulations set forth general statements as to the purpose and administration of the two programs. These statements do not vary significantly from the present regulations. However, it should be noted that § 124.1 makes clear that these regulations are effective as to all concerns participating in the section 8(a) program and all applicants for admission upon their effective date, i.e., 45 days after publication in the **Federal Register**. (See § 124.100 of a special provision regarding conforming business plans of current program participants.) Further, § 124.2 makes clear that the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB/COD) is responsible for management of the programs under the supervision of and responsible to the Administrator of the SBA. Clarification of this relationship is necessitated by statutory admendments which occurred subsequent to the last publication of regulations governing these programs. Section 124.3 of these regulations makes clear that previous willful violation of any of SBA's regulations may result in the denial of admission to the section 8(a) or 7(j) program. This clarification has been made as a result of the public comment SBA received in the proposal. In the proposal, it should be noted, the term *willful* did not appear.

Section 124.100 establishes a series of administrative definitions relevant to the section 8(a) progam of terms which are used throughout these regulations. These definitions appeared in the proposed regulations at § 124.301(b). The substance of the provisions which appeared in the proposal has not been altered from the manner in which it was presented at that time. However, several new definitions have been added. These include terms relative to eligibility of applicants for admission to the programs which are used to define types of eligible businesses. In addition, the concept of selfmarketing is also defined in this section. All of these new terms had previously been alluded to in the preexistent regulations, but heretofore had not been defined.

Section 124.100(m), a new provision, makes clear that present participants in the section 8(a) program will be notified by SBA of the approved Standard Industrial Classification (SIC) Code desingations contained in their business plans. In order to avoid any inequitable effect of the application of §§ 124.102 and 124.207, each present participant will be allowed to make a written request that SBA make one or more changes in its approved SIC Code designations to conform its business plan to these regulations.

Sections 124.101 through 124.109 set forth the eligibility criteria for the section 8(a) program. Section 124.101(a) provides that applicants for participation in the section 8(a) program must meet all eligibility criteria set forth in these regulations, and that determinations of eligibility shall be made in writing by the AA/MSB–COD, whose decision shall be final. Section 124.101(b) sets forth a procedure for reviewing eligibility determinations where members of the public submit evidence that a determination was based on fraudulent information, or that SBA did not follow the requirements of these regulations in rendering the determination. SBA will consider

comments regarding this new requirement for an additional thirty day period.

Section 124.102 prescribes the applicable size standard to be used in determining the eligibility of each participant in the program. This section provides a partial departure from the existent regulations. In this regard an applicant for admission to the section 8(a) program must establish that it is small as set forth in 13 CFR 121.4 At the time of admission, the size standard to be applied will be that of the primary industry classification of the concern as expressed in its business plan. As the concern continues to participate in the section 8(a) program, however, it will be required to certify to SBA that it is small for the purpose of performing each section 8(a) subcontract which it is awarded. This is a new requirement. In addition, a firm will only be permitted to perform contracts under section 8(a) which are classified according to the Standard Industrial Classification Code numbers which appear in its business plan as established pursuant to § 124.207 of these regulations.

Section 124.103 describes ownership criteria to be applied to applicants for the program. In this regard, subsections 124.103 (c), (d), and (e) set forth criteria involving part ownership of an applicant for the section 8(a) program by nondisadvantaged individuals, concerns in the same similar lines of business, and participation in the program by a section 8(a) business concern following a change of ownership, which have not heretofore been included in SBA's regulations. The intent of these provisions is to make more clear SBA's concern that program participation be focused directly upon socially and economically disadvantaged individuals as the statute intends.

Sections 124.103(f) and 124.103(g) make it clear that concerns owned and controlled by Indian Tribes and Native Alaska Regional and Village Corporations are eligible for participation in the section 8(a) program under prescribed conditions.

Section 124.104 sets forth the statutory requirement that participants in the section 8(a) program must be controlled and managed by individuals who are socially and economically disadvantaged. The regulation makes clear for the first time that individuals who are not socially and economically disadvantaged may not exercise actual control or have the power to control the operations of an applicant or participant in the program, and the socially and economically disadvantaged ownership interest in a participant must be in excess of the ownership interest of individuals or entities which are not socially and economically disadvantaged.

Section 124.105 sets forth definitional standards for the concept of social disadvantage and remains unchanged from the rule existing prior to the publication of the proposed rule. These standards remain under review and changes to this section, if any, will be undertaken at a later date.

Section 124.106 sets forth the statutory requirement that economically disadvantaged individuals be socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive markets area who are not socially disadvantaged. It then sets forth factors to be considered in determining whether an individual is economically disadvantaged. These factors differ somewhat from those previously expressed in SBA's regulations. They represent an effort on SBA's part to more fully spell out the meaning of economic disadvantage as it is expressed in the statutory provisions and the legislative history thereof.

Section 124.107 sets forth two other statutorily required conditions for eligibility in the program, i.e., that SBA make a determination that participants will, with the assistance of the program, have reasonable prospects for success in competing in the private sector, and that sufficient assistance is available from SBA and other sources to see to it that the concern's participation in the program is useful.

Section 124.108 sets forth a number of eligibility requirements which have heretofore not been expressed in SBA's regulations, but which have previously been utilized as a matter of standard procedure in evaluating applications for participation in the program. These criteria are self-explanatory.

Section 124.109 sets forth several types of businesses which are ineligible for participation in the section 8(a) program.

Section 124.110 sets forth the standards by which a fixed program participation term and an extension thereof will be established for each participant in the section 8(a) program. In this regard, the public's attention is directed to 46 FR 57266 (November 23, 1981), at which citation the fixed program participation regulations were first published in final form. These regulations do not deviate markedly from those regulations. Since fixed program participation terms have been established for all concerns presently in the program, this section speaks only in terms of firms which will enter the program and extensions of terms for those firms already in the program. Otherwise, criteria by which the terms are to be established are for the most part the same as those already existent in SBA's regulations.

In addition, a firm may be deemed to have completed participation in the section 8(a) program prior to expiration of its FPPT pursuant to the provisions of §124.110(k). This subsection provides the criteria upon which completion will be determined, and the mechanism by which SBA will implement such a determination. It should be noted that section 8(a)(9) of the Small Business Act requires that such a determination is subject to full Administrative Procedure Act hearings, and these regulations provide for such due process as that statutory provision requires before a concern may be determined to have completed its participation in the section 8(a) program prior to expiration of its FPPT.

Section 124.111 sets forth the mechanics for obtaining extension of a fixed program participation term. These mechanics have existed in SBA's standard operating procedures prior to this time, and it is felt that by now including them in the regulations participants in the program will have a better understanding of how the extension process functions.

Section 124.112 sets forth the grounds upon which a participant may be terminated from the section 8(a) program and the procedural mechanism by which such termination will take place. These regulations vary only slightly from the preexistent regulatory scheme. In this regard, several of the criteria upon which termination may be based have been clarified. These clarifications have been adopted as a result of our experience in implementing and proceeding under the present standards, and as a result of the public comment received on the proposed regulations.

Section 124.113 sets forth a procedural framework upon which SBA may suspend contractual and other forms of assistance to section 8(a) business concerns upon an issuance of an order to show cause why such a concern should not be terminated from the program. Such suspension would continue from the time of notification of the firm, which would be simultaneous with the issue of the order to show cause, until such time as SBA deems it appropriate to lift the suspension. In most cases, this period would encompass the period of time necessary

to reach a formal conclusion of the termination proceeding. However, in some instances a suspension could last for a shorter period of time. In no circumstances would the suspension exceed the time necessary to conclude a termination proceeding in which the 8(a) business concern prevailed.

SBA has adopted these regulations based upon its desire to utilize limited program resources in the most efficient and economical manner and to protect the Government's interests. Furthermore, based upon certain recent adjudications SBA has no doubt that such a manner of proceeding is legally correct, if not mandated. The suspension procedures provided for are similar to those utilized by other contracting agencies of the Government, and are designed to afford maximum due process of law to program participants.

Sections 124.201 through 124.206 set forth the basis upon which applications for admission to the section 8(a) program will be received and processed by SBA. These sections are new to the regulations, but they express procedures which have been part of SBA standard operating procedures governing the 8(A) program for some time. They are included in the regulations to make clearer to the public SBA's procedures for admitting concerns to the program.

Section 124.207 describes the process by which the business activity of a concern admitted to the section 8(a) program is established in its business plan. A concern's primary business industry classification and related Standard Industrial Classification Code designations will be stated in its business plan upon entry into the program. Thereafter, a concern will only be eligible to receive subcontracts in the section 8(a) program which are consistent with those Standard Industrial Classification Code designations. However, under certain prescribed circumstances a participating concern will be able to amend the Standard Industrial Classification Code designation with prior SBA approval. Those circumstances are delineated in the regulation.

Section 124.301 is a new provision which describes the mechanisms by which requirements (contractual) support is made available to participants in the section 8(a) program. This section contains material which has heretofore been part of the standard operating procedure of the program, but which we feel is of sufficient value to the public to be included in the regulations. Of note are the provisions which describe the selection of specific contracts for the program and the conditions under which they are made available to participants. Section 124.301(c)(2) has been amended to state that SBA will verify the appropriateness of the SIC Code designation assigned to each requirement offered for the section 8(a) program by the procuring agency. SBA's assumption of this responsibility precludes challenges of SIC Code designations to SBA's Office of Hearings and Appeals by section 8(a) program participants or other business concerns.

Section 124.302 sets forth provisions regarding the administration of contracts and subcontracts under the section 8(a) program. This part of the regulation would add a new section to the regulations which would incorporate provisions of SBA standard operating procedures into the regulations for the first time. The important provisions in this section are subsection (b) which sets forth percentages of work required to be performed directly by 8(a) business concerns on various types of contracts and subsection (c) which describes the Certification of Competency aspect of the 8(a) program. These provisions are self-explanatory. Otherwise, as mentioned above, the remainder of this section describes procedures which have long been standard in SBA's administration of the 8(a) program but have not been specifically included in SBA's regulations.

Section 124.401 and 124.402 set forth the purposes for, and terms and conditions upon which, advance payments and business development expense will be made available to participants in the section 8(a) program. These sections are basically unchanged from the preexistent regulations governing these topics. However, the discussion of the review of public comments below does indicate the changes which were made in these two sections. Section 124.403 sets forth the criteria upon which the line of credit method of making advance payments available to a section 8(a) concern will be used. This section is the same as the preexistent provision, with the exception that it is renumbered.

Sections 124.501 and 124.502 are the renumbered sections concerning the Development Assistance Program (the "7(j) program") and the Small Business Capital Ownership Development Program (the "7(j)(10) program"). With the exception of the renumbering, no changes have been made in the present regulations governing these two programs.

Finally, § 124.1000 which contained the rules of practice governing adjudicatory proceedings governing termination of section 8(a) program participants from the program, has been deleted. These procedural rules have been replaced by Part 134 of this Title which provides for procedural rules governing all adjudicatory proceedings conducted in SBA. These procedures will be administered by SBA's Office of Hearings and Appeals under the direction of SBA's Chief Administrative Law Judge.

Review of Public Comments

During the 90 days which SBA afforded the public to comment on the proposed section 8(a) regulations, 322 written comments were received. SBA has carefully reviewed all of these comments. Where appropriate, SBA has made changes to the regulations to take into account the comments received. Where SBA has not agreed with the comments regarding a particular provision of the regulations, an explanation for such disagreement is given.

There were no substantive comments concerning §§ 124.1 and 124.2. As such, they remain basically the same as in the proposed regulations. However, § 124.1(a)(i) was amended to make clear that these regulations apply to firms which are currently participating in the section 8(a) program.

Many commenters felt that § 124.3 was vague as written in the proposal. Consequently, SBA has rewritten the section to clarify that an applicant for admission to the section 8(a) program will not automatically be denied admission to the program for violating any of SBA's regulations. Such violation must be willful. In addition, the nature and severity of any such violation will be taken into account in making a determination on the admission of an applicant to the program.

A new § 124.100 has been added to the final version of the regulations. It is a definitional section, and it has been added to clarify several terms which many commenters indicated needed explanation. In addition, the definitions which appeared in § 124.301(b) of the proposed regulations have been incorporated into § 124.100 of these final regulations. The definitions of the terms "business plan," "certification of SBA's competency," "commitment," "local buy item," "manufacturer," "national buy item," "negative control," "open requirement," "primary industry classification," "regular dealer," "requirement support," and "self-marketing" are contained in § 124.100. Many comments were received on the proposed definition of "business plan," which was found at § 124.301(b)(5) of the proposed rule. Commenters suggested that the term "business plan"

should mean documents as submitted by a firm which will be presumed to be approved unless disapproved within 30 days. Such language would be in lieu of the language limiting "business plan" to those documents submitted by an 8(a) firm and approved by SBA. SBA rejects this recommendation. In order to effectively administer the operation of the 8(a) program, SBA must be able to approve or disapprove certain provisions of an applicant's proposed business plan. By restricting SBA to a 30-day review process, a firm's proposed business plan may not be afforded the proper consideration that it deserves. This could well lead to firms having business plans which are unworkable within the confines of the 8(a) program. Moreover, inadequate business plans would hinder a section 8(a) firm's development, contrary to the goals of the 8(a) program.

In addition, § 124.100(m) explains the applicability of these final rules to firms which are currently participating in the section 8(a) program. This subsection was added in response to concerns and confusion raised by current 8(a) firms' comments. SBA will review the business plan of each participating section 8(a) concern and will send a notice to each concern, within 120 days of the publication of this final rule, informing such concern of the SIC Code designations for which it has been approved to receive 8(a) contract awards. A currently participating section 8(a) firm will have 30 days from the mailing of such notice to request changes in SIC Code designations so that the firm's approved business plan conforms with these regulations (i.e., so that its primary industry classification and related SIC Code designations are stated in its business plan). A requested correction will be effective only after SBA gives its written approval.

Many commenters believed that the term "primary industry classification," in proposed § 124.102(a), should be clarified. Commenters stated that the term was confusing since no size standard is based on such a classification. The definition of this term was added in the final rules at § 124.100(i).

Numerous commenters objected to the proposed requirement for certification and verification of each contract, as required by § 124.102(b), and believed that such a requirement would cause delays in processing 8(a) contracts. SBA has not changed the certification and verification requirements of § 124.102(b) in these final regulations. Verification of the size of an 8(a) firm by SBA for each contract will serve a necessary purpose. It will eliminate challenges to the size certification by other section 8(a) concerns in connection with a particular 8(a) contract and will assure SBA that small businesses are receiving the benefit of the section 8(a) program. The verification will be conducted by the SBA contracting officer or designee by using the Business Development Specialist Review form, the business plan of the certifying concern, financial statements and other pertinent information.

Section 124.102(c) was heavily commented on. The commenters strenuously opposed the language which appeared to limit a firm to having only one SIC Code designation in its business plan. There was a typographical error in this proposed subsection which appeared to so limit an 8(a) firm. This error has been corrected to reflect that a section 8(a) concern can have more than one SIC Code designation in its business plan. There is no maximum number of SIC Codes which may appear in a firm's business plan. However, the business plan itself is a limiting factor. All SIC Codes in the business plan must reasonably relate to the development of the 8(a) concern in accordance with the business plan (see § 124.207).

Commenters were also concerned that a section 8(a) concern was limited, by § 124.102(c), to performing only 8(a) contracts. Such a notion is directly in conflict with the purpose of the section 8(a) program. SBA encourages 8(a) firms to pursue commercial and competitive Government contracts. Consequently, the language of this subsection has been changed to clarify that an 8(a) firm can perform any non-8(a) contract, and is limited only when performing 8(a) contracts to the SIC Codes specified in its business plan.

A number of commenters objected to the provision of proposed § 124.103 prohibiting part ownership in an 8(a) applicant concern by nondisadvantaged individuals, their spouses or immediate family members, who were former employers of the disadvantaged owner(s) of the applicant concern. A need for such nondisadvantaged individuals as a source of capital was stressed by many commenters. SBA's concern regarding this paragraph is a concern for the possibility of 8(a) firms acting as fronts for nondisadvantaged individuals. The 8(a) program has had a history of many abuses in this area where the real owner/manager was a nondisadvantaged individual and the disadvantaged "owner(s)" was (were) simply acting out the will of the nondisadvantaged individual. Because of this concern, SBA feels that this paragraph cannot be entirely eliminated. However, SBA agrees that in some instances such nondisadvantaged former employers of the disadvantaged owner(s) should be permitted to be part owners of an 8(a) concern and will allow such part-ownership where the applicant concern obtains prior approval from SBA.

Commenters also suggested that the term "negative control" in this section be defined. Such term is adequately defined in SBA's size regulations. The only change with respect to such term in these final rules is an updating of the definitional citation.

Section 124.104 sets forth the statutory requirement that participants in the section 8(a) program must be controlled and managed by individuals who are socially and economically disadvantaged. It clarifies, for the first time, that individuals who are not socially and economically disadvantaged may not exercise actual control or have the power to control the operations of an applicant or participant in the program.

Several commenters felt that the lead-in paragraph of § 124.104 was confusing and that it could be read to preclude equal minority owners. SBA does not agree that this language can be so read. Equal minority (disadvantaged) owners are permitted so long as the ownership portion of the disadvantaged managers is a greater percentage of the business entity than any other owners (i.e., the total percentage of ownership of all the disadvantaged managers combined must be at least 51 percent). Therefore, three disadvantaged individuals each owning 17 percent of the business entity and who are involved in the applicant concern's management and daily business would meet the requirements of § 124.104. However, if only two of the disadvantaged owners are involved in the management and daily business operations of the firm, such concern would not qualify under § 124.104 for the 8(a) program. The 8(a) program is designed to aid disadvantaged entrepreneurs, not investors who happen to be disadvantaged. The language of § 124.104(b) has been slightly amended to clarify that multiple disadvantaged managers is permissible.

Section 124.105 sets forth definitional standards for the concept of social disadvantage. In its proposed form, this section would have provided that members of certain designated groups "are considered socially disadvantaged," but that this presumption of social disadvantage would be subject to rebuttal if it did not

appear that the individual has maintained identification with the group to the extent that he or she was "commonly recognized" as a group member. If that showing were not made, the individual would have been required to demonstrate his or her social disadvantage according to the standards set forth for nonmembers of designated groups. The vast majority of comments received opposed this requirement because it would be impractical or inappropriate for the SBA to judge the extent of an individual's public "identification" with a group.

Many comments also opposed the language of proposed § 124.105(b)(3) which stated that "the attainment of a qualify education or job will not absolutely disqualify the individual from being found socially disadvantaged if sufficient other evidence of social disadvantage is presented to SBA." The commenters felt that the use of the word "absolutely" implied that circumstances existed where a qualify education or job could disqualify one from being termed socially disadvantaged. In order to avoid ambiguity, the final regulation (§ 124.105(c)(2)) make it clear that one's education or occupation, while of relevance, is not along dispositive of one's status as being socially disadvantaged or not.

As mentioned earlier, this section is therefore unchanged from its pre-notice of proposed rulemaking content. Changes to § 124.105 remain under review and may occur pursuant to appropriate rulemaking procedures.

Those commenting on proposed § 124.106 felt that different economic factors, relative to industry, should be considered in determining whether or not an individual is economically disadvantaged. It is, and has been, SBA's intention to consider different factors for different types of businesses in any such determination, and the regulations have been changed to reflect that view. Commenters also objected to the language of § 124.106(b)(1) concerning an individual's primary residence. It was felt that either a private residence is an irrelevant criterion in determining economic disadvantage, or that the value of the primary residence should be reduced by liens, mortgage obligations and other encumbrances in any such determination. The final rules have been changed so that only the equity value of an individual's primary residence is considered in determining economic disadvantage. In addition, commenters believed that whether an applicant firm is economically disadvantaged should be determined by comparison between the applicant concern and other concerns in the same business area who are not socially disadvantaged. The final regulations have been changed to reflect this comment.

Section 124.107 sets forth two other statutorily required conditions for eligibility in the program, i.e., that SBA make a determination that participants will, with the assistance of the program, have reasonable prospects for success in competing in the private sector, and that sufficient assistance is available from SBA and other sources to see to it that the concern's participation is useful.

Many commenters thought that the time period during which a firm must have a reasonable prospect for success in order to be eligible for the 8(a) program should be specified. The final rules have been clarified so that an applicant concern must have a reasonable potential for success within the maximum amount of time that a concern may be in the 8(a) program (up to seven years). Several commenters also requested that the term "reasonable prospect for success" be defined. Such a term is not subject to simple definition. The factors to be examined vary with each particular type of business concern. In addition, the circumstances that any one firm finds itself in are, for the most part, unique. These factors and circumstances must be analyzed together to make any determination concerning reasonable prospect for success. Consequently, any attempted definition may not take into account a unique factor or circumstance that would otherwise give an individual applicant concern a reasonable potential for success. SBA does not define such term so that a particular firm can show unique circumstances that should qualify it for the 8(a) program. If there is a doubt about a reasonable propsect for success, it will be resolved in favor of the applicant concern.

Section 124.108 sets forth a number of eligibility requirements which have heretofore not been expressed in SBA's regulations, but which have previously been utilized as a matter of standard procedure in evaluating applications for participation in the program. Two of the four proposed additional eligibility requirements of § 124.108 have been changed, in response to comments received, from their version in the proposed rules. The first was entitled "Good Character" in the proposed rules. Commenters recommended either deletion of the term "good character" or definition of such term to avoid subjective interpretation and arbitrary abuse. SBA has rewritten this subsection, calling it "Individual Character Review," and has more clearly described what will be considered under this eligibility requirement. Basically, if SBA receives information from a credible source or from the section 8(a) program application itself that an individual applicant has engaged in criminal conduct within the preceding five years, the application process will stop until SBA's Inspector General has reviewed and evaluated such charge(s).

The eligibility requirement entitled "Individual Eligibility Limitations" has also been amended from its proposed form. The comments suggested a second exemption allowing re-entry, where a firm is terminated due to SBA's failure to provide contract support. This entire subsection has been rewritten. A former 8(a) concern may now be reinstated into the 8(a) program for that amount of time which remained in its Fixed Program Participation Term at the time it withdrew from the program. A new FPPT will not be established upon reinstatement. However, there are now three situations, instead of one as in the proposed rules, in which such a firm may be reinstated, including where there are circumstances beyond the control of the 8(a) concern which inequitably interrupted the continued participation of the concern in the 8(a) program. The situation that the commenters recommended be a second exception to re-entry will now fall within this third category allowing reinstatment. However, in order for there to be reinstatement under any one of the three provisions, the 8(a) concern must have voluntarily withdrawn from the 8(a) program and the concern must have totally ceased its business operations.

Section 124.109 sets forth several types of businesses which are ineligible for participation in the section 8(a) program. This section was very lightly commented on. Those commenting believed that a definition should be provided for the terms "Brokers" and "Packagers." Both of these terms are used in connection with the implementation of the Walsh-Healey Public Contracts Act. "Packagers" are distinguished from "assemblers" in determining whether or not a firm is a manufacturer [see 48 CFR 22.606–1(d)]. "Brokers" are intermediaries who bid low to obtain a contract and then subcontract it out to another business concern. Brokers are distinguished from "agents," who are permitted under the Walsh-Healey Public Contracts Act, since the agency relationship is one that is disclosed up front [see 48 CFR 22.607].

These terms are better defined by the Walsh-Healey Public Contracts Act. As such, they are not defined in these final regulations.

Section 124.110 of the proposed regulations set forth the standards by which a fixed program participation term (FPPT) and, where appropriate, an extension thereof, will be established for each participant in the section 8(a) program. Section 124.111 delineates the mechanics of applying for an extension of one's FPPT. Some commenters questioned the advisability of fixed progam participation terms and voiced a preference for program completion only upon a firm's achievement of competitiveness.

In response to these comments, SBA refers the public to 46 FR 57266 (November 23, 1981), at which citation the final regulations governing fixed program participation terms were published. SBA introduced fixed program participation terms into the section 8(a) program in its implementation of Pub. L. 96–481. As stated in the preamble to that final regulation, Pub. L. 95–507, 92 Stat. 1760 (October 24, 1978), clearly states that the purposes of the section 7(j) and 8(a) programs are to foster business ownership, to promote competitive viability, and to clarify and expand the SBA's minority enterprise program. The implication of the terms "foster" and "promote" is that the SBA is direted to take actions to improve and advance the economic well-being of firms participating in the section 8(a) program. It is, however, beyond the intent of the statute and the ability of the SBA to guarantee or attempt to insure the success of participating firms. Neither Pub. L. 96–481, its implementing regulations or these revised regulations change the philosophy established by Pub. L. 95–507. Furthermore, Pub. L. 96–481 requires that the terms of program participation be fixed for each firm at the time it is approved for participation in the section 8(a) program.

Some commenters were concerned that the criteria which SBA uses as guidelines in deciding an appropriate FPPT for a given firm are not specified in the regulations. It is SBA's intention that, in addition to the criteria stated in the regulations, actual notice of any additional criteria will be providing each firm upon its application to the program. SBA's District Offices will make such information available in conjunction with the application forms.

Some commenters questioned the effect of the expiration of a firm's FPPT on its ability to execute options or modifications related to a contract received under the section 8(a) program. It has always been SBA's position that no new section 8(a) contract can be entered after a firm's FPPT has expired, but that options or modifications, related to contracts awarded during the FPPT, are permissible provided that, in the case of modifications, they are not so extensive that under ordinary circumstances a new contract would be executed.

The comments reflected an uncertainty as to the meaning of "the progressively increasing importance of contract support, other than section 8(a) contract support," as used in § 124.110 (g)(3). In negotiating an FPPT or an extension of an FPPT, SBA will look favorably on a firm which anticipates an increasingly greater percentage of its total contract dollars to be made up of non-8(a) contracts for each year over the course of its FPPT. Since one of the purposes of the section 8(a) program is to develop self-sufficient businesses, an applicant with little or no prospect of receiving non-8(a) contracts or of increasing its reliance on such contracts would not be an appropriate participant in the section 8(a) program.

Similarly, SBA looks to a firm's decreasing dependence on Advance Payments and Business Development Expense funds as indicators of a firm's business development in deciding whether to grant it an extension of its FPPT.

Some commenters stated that SBA should permit administrative appeals of determinations concerning the length of an FPPT. Since by statute such terms are mutually agreed upon by the applicant and SBA, such an appeal is unnecessary. Section 7(j)(10) of the Small Business Act, 15 U.S.C. 636(j)(10), also provides 8(a) concerns with an opportunity to request an extension of their FPPT's and, without mention of further input from the section 8(a) concern, authorizes SBA to grant or deny a firm's request. Therefore, appeals concerning requests for extensions of FPPT's are not in keeping with the authorizing legislation.

Some commenters objected to the deletion of a regulatory subsection covering program completion which would occur after a hearing confirming that a firm has satisfied its business development goals as stated in its business plan. While SBA believes that well-developed business plans and appropriate FPPT's will obviate the need for such a subsection in the vast majority of cases, SBA recognizes the appropriateness or retaining such a section. Therefore, SBA has included a subsection governing program completion which appears as subsection 124.110(k) in this final regulation. The language of this new subsection is substantially the same as that previously included in Part 124 of these regulations at § 124.1–1(d).

Section 124.112 of the proposed rule, Program Termination, set forth the grounds for which SBA could institute termination proceedings against an 8(a) program participant. Generally, the public comments voiced concern that some of the grounds were too vaguely worded and subject to contradictory interpretation. As a result of these comments, SBA has made the following changes to this section.

SBA has clarified that a firm's failure to maintain its status as a small business under the Small Business Act and its implementing regulations for *each* of the Standard Industrial Classification Code designations contained in its business plan is a separate ground for termination from the program [see § 124.112(a)(2)]. If, however, a firm becomes large for one or more, but not all, of its SIC Codes, it can continue to participate in the 8(a) program under the SIC Code designation(s) for which it has maintained its status as a small business.

In the interest of fairness, SBA's inability to provide contract support (previous ground number 6) has been deleted, upon consideration of the comments received, as a ground for termination.

The time limit for the return of requested audited financial statements (current number 6, previous number 7) has been extended to 180 days in recognition of the lengthy delays sometimes associated with obtaining audited financial statements.

Former ground number 11 (current number 10) has been amended to delete a time restriction on a firm's achieving its business goals as one reason for which termination proceedings could be instituted.

Former ground number 13 which would have authorized termination for inadequate management performance by the concern's management has been deleted. Generally, this ground is very difficult to demonstrate unless it occurs in conjunction with one or more other grounds for termination. Therefore, SBA views this ground to be duplicative and unnecessary to proper program administration.

In response to public concern that insignificant financial debts to any Government entity could be construed to be a ground for termination under former number 15 (current number 13), SBA has added the words "significant" and "Federal" to that provision.

SBA has also clarified that any joint venture agreement referred to in previous number 19 (current number 17) must relate to the performance of the section 8(a) subcontract.

Several commenters were concerned that former number 22 (current number 20) could result in an unfair termination of an 8(a) concern from the program for false submissions made by an employee of the firm without the principal(s) of the firm having knowledge of such submission. Therefore, SBA has amended this reason for termination to include the requirement that the principal(s) of the firm have or should have knowledge of the false submission(s).

Many public comments indicated a concern that a firm's violation of even the most unimportant SBA regulation could result in its termination from the program. SBA has clarified that, in order to be a ground for program termination, the violation must be of a significant SBA rule or regulation.

Subsection 124.112(b) has been amended to correct the reference to the hearing procedures which appear in Part 134 of this title.

Several commenters objected to the inclusion of § 124.113, which deals with suspension of program assistance, in situations where termination proceedings would be instituted and where SBA has determined that the Government's interests would be jeopardized by SBA's continuing to make assistance available to the suspended firm. SBA has clarified that *only* upon issuance of an order to show cause why such an 8(a) concern should not be terminated from the program may the Administrator or the AA/MSB–COD suspend contract support to the section 8(a) participant. SBA has also amended the regulation to make clear that a suspension would only occur in those situations where immediate action is necessary to protect the Government's interest. It is contemplated that in such a situation involving an indicated section 8(a) concern or its principal(s) where conviction for the indicted offense would be grounds for termination from the program SBA may suspend the indicted firm pending the resolution of the indictment. The final regulation also states that, where requested, a hearing on the suspension will commence as soon as possible, but in no case more than 20 calendar days from the Administrative Law Judge's ruling, if the request is granted.

No comments were received concerning §§ 124.201, 124.202, 124.203 and 124.205. As such, these procedural sections remain the same in these final regulations as they were in their proposed form.

Several commenters suggested that § 124.204 be revised to establish a definite and objective order or priority for award of contracts to responsible 8(a) concerns. SBA believes that such a provision would be inappropriate in this section. Pursuant to this section, SBA must make a determination that there is a reasonable likelihood that 8(a) requirements are available to support the applicant concern. Such a determination must be based upon the circumstances and needs, at the time of application, of the area and industry in which the applicant concern wishes to conduct its business. Any order of priority in these regulations would be inflexible to the unique situation of a particular 8(a) applicant.

Section 124.207 was heavily commented on. However, the comments were all basically the same. The primary objection raised was to the provision prohibiting change in SIC Codes in a firm's business plan after entry into the 8(a) program. In response to these comments, § 124.207(b) has been added in the final regulations. This subsection authorizes three instances where a firm's business plan may be amended. These three situations are designed to be limited in their application. A participating 8(a) concern will not be able to change or amend its business plan simply because it has gotten too large to qualify for contracts under a particular SIC Code designation and now wishes to add another SIC Code designation with a different size standard. In order to be deemed "unable to achieve reasonable section 8(a) development," under § 124.207(b)(2), an 8(a) concern's previously assigned SIC Code designations must be inadequate to enable the section 8(a) firm to achieve at least 40 percent of its approved section 8(a) contract support level. In addition, it is intended that, pursuant to § 124.207(b)(2), a firm not be permitted to add an SIC Code designation in a Division Classification, as expressed in the SIC Code manual, which was not already in its approved business plan. For example, if an 8(a) firm had several SIC Code designations in its business plan under the Division Classification of Manufacturing and is determined to be unable to achieve reasonable 8(a) development, it could add another SIC Code under the Manufacturing Division Classification, but could not add an SIC Code under the Division Classification of Retail Trade or of Construction, etc.

Commenters also objected to the use of the term "principal business activity" in the proposed rules. This term has been replaced by the term "primary industry classification," which is defined in § 124.100(i), in these final regulations.

Section 124.301 of the proposed rule was also heavily commented on. In these final regulations, the definitional provisions which appeared in § 124.301(b) in the proposed rule are located in a new § 124.100. Sections 124.301(c) and 124.301(d) of the proposed rule have been redesignated §§ 124.301(b) and 124.301(c) accordingly.

Many commenters objected to the definition of "business plan" in proposed § 124.301(b)(5). Such definition appears in § 124.100 of these final regulations. The comments regarding such definition and SBA's response thereto are found in the explanatory material of § 124.100.

Many commenters also objected to proposed § 124.301(c)(8) [now § 124.301(b)(8)]. These comments centered around the adverse impact language of proposed § 124.301(c)(8)(iv) [now § 124.301(b)(8)(iv)]. In response to these comments, this subparagraph has been rewritten to clarify that all relevant factors will be considered in determining whether another small business would be adversely affected by SBA's acceptance of a proposed procurement for section 8(a) award. Two factors which will be considered, if applicable, are listed in § 124.301(b)(8)(iv)(A). The situation in which adverse impact will be presumed has also been clarified.

Section 124.301(c)(5) [formerly § 124.301(d)(5)] has also been clarified in response to comments received. It specifies that SBA will provide a Certification of SBA's Competency after it has determined the capability of its 8(a) subcontractor, bu prior to the award of the actual contract. Such certification occurs after successful contract negotiations result in a proposed award to the 8(a) concern.

Several commenters objected to the proposed percentages of work required to be performed directly by 8(a) concerns in § 124.302(b). However, no persuasive reasons were set forth for changing these percentages. Therefore, they remain as they were in the proposed rule.

The comments concerning § 124.401, Advance Payments, centered on two main points. First, many commenters were concerned that § 124.401(b) was too restrictive in its prohibition of advance payments where financing is available on reasonable terms, where "reasonable terms" includes financing at the current market rate. SBA agrees with this concern and has deleted that portion of the subsection which made

reasonable terms synonymous with current market rate.

Second, some commenters misinterpreted § 124.401(b) to allow only one advance payment at a time. SBA wishes to clarify that an 8(a) concern may have several advance payments outstanding on on-going contracts. This subsection merely precludes an 8(a) concern from receiving additional advance payments if it has not repaid its obligation from a prior contract which it has completed, on which it has defaulted or which the Government has terminated. Other commenters advocated allowing an exception to this requirement where an 8(a) concern has successfully completed its contract and has an outstanding payment due on its advance payment merely because the contracting agency has delayed in making final payment on the contract. SBA believes that in this situation strict application of this subsection would unfairly penalize the concern. Therefore, SBA has included this suggested exception in this subsection.

SBA received a comment which objected to the requirement of a demand note for the amount of the advance payment. SBA believes that a note would be helpful additional evidence of the obligation in a situation where expedited collection of the advance payment is necessary. However, SBA agrees that it need not be a demand note, and has amended this subsection accordingly.

SBA has already added a sentence to § 124.401(d)(4) which clarifies that amounts remaining in the special bank account over and above those funds needed to meet the advance payment liquidation schedule may be disbursed to the section 8(a) concern provided that the unpaid balance on the section 8(a) subcontract is sufficient to meet the remainder of the liquidation schedule.

Some commenters expressed concern that § 124.401(e)(2) was too restrictive in its requirement that all previous advance payments become immediately due and payable upon the cancellation of one advance payment. SBA has considered these comments and has amended this subsection to allow the concern until its receipt of the final contract payment on the subcontract to which the cancelled advance payment relates to repay all outstanding advance payments.

Some commenters of § 124.402, Business Development Expense (BDE), were opposed to SBA's proposal of more restrictive rules governing this business development tool. Some believed that allowing BDE only where financing was not available at the current market rate was too restrictive. SBA has considered these comments and agrees that if financing is not available at a reasonable rate for a particular firm, then BDE may be made available.

Several commenters suggested that BDE be made available for purchasing capital equipment whenever such acquisition could not be made by other financial means without adversely affecting the concern's financial condition. SBA believes that this suggestion would result in no standard at all because, for any purchase of capital equipment, the argument could be made that the financial condition of the company is adversely affected.

Some commenters objected to SBA's imposition of protections for the agency's investment in the 8(a) concern through BDE awards. SBA believes that these protections are necessary during the course of the subcontract, but upon successful completion of the subcontract to which the BDE relates, the protections would no longer apply.

In response to public comment, SBA has revised § 124.402 to clarify that BDE will be awarded only after SBA conducts a complete analysis of the firm's written request and determines that an award of BDE will promote the long-term business development objectives of the section 8(a) concern. Further, SBA has amended this section to list the potential uses of BDE awards in order of priority. It is the policy of SBA that BDE will be used for capital equipment first, then for other capital improvements and finally for price differential. SBA will only grant BDE for price differential once for any one type of contract requirement and only if SBA's analysis of the BDE request demonstrates that the concern will be able to produce the item or service competitively in the future. These requirements for the award of BDE for price differential are included in order to carry out SBA's policy that BDE be used in connection with a given subcontract to promote the long-term business development objectives of the section 8(a) concern.

SBA has added a new subsection (d) to this section which relates to participatory BDE. SBA believes that in order to most efficiently use the BDE funds it has available, firms should be encouraged to cost share on capital equipment or capital improvements purchased with BDE funds. Former subsections (d) and (e) have been renumbered as subsection (e) and (f), respectively.

Further Opportunity to Comment

SBA is issuing these regulations as a coherent whole but, in order to accommodate those who wish to comment on this publication, SBA will continue to receive comments on the record and evaluate any such comments as part of its ongoing review of these regulations. Written comments should be addressed to Docket Clerk, Office of General Counsel, 1441 L Street, NW., Room 700, Washington, DC 20416.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

SBA considers that this revision of regulations taken as a whole constitutes both a major rule for the purposes of Executive Order 12291 and a rule which will have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Therefore, we offer the following Regulatory Impact Analysis/ Regulatory Flexibility Analysis for the purpose of compliance with the pertinent requirements of those two measures.

Since this revision is made up of a number of different individual rules, these measures in some instances will require analysis of the individual rules and in some instances the entire revision. In instances in which the Executive Order or the Act require explanation of specific sections, this analysis will so state. Otherwise, for the purposes of this analysis, the revision will be treated as if it were one rule.

1. *Description of potential benefits of the rule:* This revision taken as a whole will provide both SBA and participants in its Minority Small Business Capital Ownership Development Program with clearer guidance as to the process by which participation in the program is achieved, and once that participation is achieved, how the participants and SBA are to conduct their mutual roles in the administration of the program. It is our belief that SBA will benefit by the revision since its purpose is to clarify the regulatory framework governing the program and thus provide for more efficient administration. In addition, program applicant and participants should benefit from the revision because it should clarify for them the procedure by which entry into the program is attained and participation in the program is governed.

2. *Description of potential costs of the rule:* There should be no costs inherent in the revision which are not presently involved in the administration of the Minority Small Business Capital Ownership Development Program. This revision merely establishes the regulatory framework upon which the program is administered, it does not by itself impose monetary or other types of costs upon SBA or program participants.

3. *Description of the net benefits of the rule:* This revision, taken as a whole, should provide for more efficient program management.

4. *Description of reasons why this action is being considered:* This action is being considered as part of normal periodic Agency revisions of its regulations. As such, the revision is based upon general experience with administration of the regulations as they presently exist. In addition, certain aspects of the revision, specifically the provisions dealing with size of program participants (§ 124.102), ownership of program participants by Indian Tribes (§ 124.103(f)), Advance Payments and Business Development Expense (§§ 124.401, 402, 403) result from specific instances of adverse experience with the present regulations covering those topics. Other aspects of the revision such as the provisions governing Fixed Program Participation (§ 124.100, 111), the relationship of SBA's Administrator to the Associate Administrator for Minority Small Business and Capital Ownership Development (§ 124.2), the definition of economic disadvantage (§§ 124.105 and 106), and the inclusion of Asian Americans and Asian Pacific Americans among the "designated minority groups" (§ 124.105(a)) reflect regulatory changes mandated by statutory changes and receipt and evaluation of information by the Agency from outside sources, all occurring since the initial publication of regulations to govern the program. It was determined by the Agency to incorporate these provisions into one all encompassing revision rather than a series of piecemeal changes for administrative convenience and for easier public consumption.

5. *Statement of objectives and legal basis for the final rule:* The purpose of this regulation is to provide a general revision of the regulations governing the Minority Small Business and Capital Ownership Development Program which reflects statutory changes occurring since the initial program regulations were promulgated and administrative applications of those regulations. The legal bases for the final rule are sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a).

6. *Description of entities to which the final rule will apply:* This revision will apply to all small business which wish to apply for admission to, and upon which admission do avail themselves of the benefits of participation in the Minority Small Business and Capital Ownership Development Program.

7. *Description of the reporting, recordkeeping and compliance requirements of the proposed rule:* The following provisions of the final rule impose significant reporting requirements:

a. Sections 124.105 and 124.106 require submission of information to SBA by applicants for admission to the program in order to prove social and economic disadvantage. These are statutory requirements.

b. Section 124.110 requires submission of information to SBA by applicants for program participation in order to establish a fixed program participation term. The type of data to be submitted is clearly indicated in the proposal.

c. Sections 124.401, 124.402 and 124.403 dealing with Advance Payments, Business Development Expense and Letter of Credit all impose reporting requirements upon participants in the program who receive these forms of benefits. The reporting involves maintenance of appropriate accounting mechanisms for the receipt and use of the benefits.

d. Section 124.501 dealing with the development assistance program involves the imposition of reporting requirements upon those concerns which receive assistance under that provision.

The same provisions as indicated above with respect to reporting requirements require concomitant recordkeeping requirements in order to accomplish the required reports. All program participants which avail themselves of the various forms of assistance indicated in the identified provisions are subject to the reporting and recordkeeping requirements indicated. The skills necessary for preparation of the reports and records are those general business recordkeeping and form preparation which normally confront applicants for government benefits. In some instances the small business may utilize professional accounting or legal services in order to prepare the required submissions.

In addition to the requirements indicated above, it should be noted that SBA requires applicants for admission to the section 8(a) program to submit audited financial statements as part of the application process, and quarterly financial statements which must be prepared by professional accountants are required of program participants.

8. *Federal Rules:* There are no relevant Federal rules which duplicate or overlap the revision.

9. *Analysis of Public Participation:* A detailed analysis of the public comments received in response to the proposal and SBA's efforts to conform this final rule to that commentary has been provided above. Obviously, in a program as detailed and complex as that covered by these rules, the participants will have different views of the rules by which their participation is to be regulated than will the regulations.

SBA submits that it has rejected no significant alternative to this revision which would minimize any significant economic impact of the proposed rule upon small entities. In this regard, the vast majority of comments on the proposal related to regulatory provisions which do not in and of themselves impose economic impact. In preparing these rules, we have sought to adhere closely to the statutory framework in establishing the eligibility and participation requirements for the Minority Small Business and Capital Ownership Development Program. While many suggestions have been made as to alternative approaches to the accomplishment of this objective in the case of individual sections of the revision, we feel that no alternatives which might in some way minimize economic impact on applicants or participants accomplish the stated objectives of the applicable statutes in a manner more consistent than that provided in the revision.

Compliance With the Paperwork Reduction Act of 1980

In compliance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35) and its implementing regulations, the recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have been approved by the Office of Management and Budget (OMB) under number 3245–0015: §§ 124.105(b), 124.106(b)(1), 124.106(b)(2), 124.106(b)(3), 124.202, 124.204, 124.205, 124.403(b)(4), 124.502(a)(1), and 124.502(a)(6).

The recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have also been approved by OMB:

§ 124.103(c) [OMB Approval No. 3245–0145]; § 124.103(e) [OMB Approval No. 3245–0145]; § 124.111(c) [OMB Approval No. 3245–0147]; § 124.112(a)(7) [OMB Approval No. 3245–0205]; § 124.112(a)(17) [OMB Approval No. 3245–0146]; § 124.205 [OMB Approval No. 3245–0015]; § 124.206 [OMB Approval No. 3245–0143]; §§ 124.401(c)(1)(i), 124.401(c)(1)(iii) and 124.403(b)(3) [OMB Approval No. 3245–0148]; § 124.402(e) [OMB Approval No. 3245–0149]; and §§ 124.112(a)(6) 124.205 and 124.502(a)(4) [OMB Approval No. 3245–0151].

Section 124.104(b) contains a reporting requirement that is not subject to the

Paperwork Reduction Act because it will affect fewer than ten individuals annually.

List of Subjects in 13 CFR Part 124

Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, pursuant to the authority set forth in sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a), SBA hereby revises Part 124 of Title 13 of the Code of Federal Regulations to read as follows:

PART 124—MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Sec.

Authority: 15 U.S.C. 637(a).

§ 124.1 The Section 8(a) and 7(j) Programs.

(a) *General.* (1) These regulations implement sections 8(a) and 7(j) of the Small Business Act (15 U.S.C. 637(a) and 636 (j)) which establish the Minority Small Business and Capital Ownership Development Program (program). These regulations apply to all section 8(a) concerns participating in the program as of the effective date of these regulations and all concerns applying for admission to the program subsequent to that date.

(2) Section 8(a) authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and development) with other Government departments and agencies, and to negotiate subcontracts for the performance thereof with small business concerns owned and controlled by socially and economically disadvantaged individual(s).

(3) Section 7(j) authorizes SBA to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act.

(b) *Purposes.* (1) It is the purpose of the Section 8(a) program to:

(i) Foster business ownership by individuals who are both socially and economically disadvantaged; (ii) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and (iii) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(2) It is the purpose of the Section 7(j) program to: (i) Foster business ownership by individuals in groups that own and control little productive capital; and (ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

§ 124.2 Program Management.

The Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB–COD) is responsible for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of the Small Business Act under the supervision of, and responsible to the Administrator of SBA.

§ 124.3 Violations.

Willful violation by an applicant for admission to the section 8(a) program or an applicant for participation in the section 7(j) program of any of SBA's regulations governing its other programs may result in the applicant's denial of admission to the program. Any such violation will be considered by the AA/MSB–COD in making a determination on the admission of an applicant to the program, and such consideration will include the nature and severity of any such violation.

§ 124.100 Definitions and applicability of these regulations.

(a) "Business plan" means the business plan documents as submitted by the applicant section 8(a) concern and approved by SBA which include the objectives, goals, and business projections of a section 8(a) concern, and all written amendments or modifications which have also been approved by SBA.

(b) "Certification of SBA's competency" means a certification by SBA that it is competent to perform the requirement as stated in the contract, and is based upon an assessment of a section 8(a) concern's competency to perform. The assessment does not require a special investigation or the issuance of a Certificate of Competency (COC) as provided for elsewhere in these regulations under the authority of section 8(b)(7) (A), (B), and (C) of the Small Business Act.

(c) "Commitment" means the commitment made by a procuring activity to SBA that the procuring activity will negotiate to place a contract with SBA or subcontract with a section 8(a) concern, provided there is no material change in requirements, availability of funds, or other pertinent factors. A commitment does not mean that an award of a particular contract to SBA and a section 8(a) concern will or must be made.

(d) "Local buy item" means a supply or service purchased to meet the specific needs of one user. Examples include the purchase of nonprofessional services, such as custodial or trash hauling, and construction work.

(e) "Manufacturer" means a concern which owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment described by the business plan. In order to qualify as a manufacturer, a concern must be able to show (1) that it is an established manufacturer of particular goods or goods of general character which may be sought by the Government, or (2) if it is newly entering into such manufacturing activity, that it has made all necessary prior arrangements for space, equipment, and personnel to perform manufacturing operations. A new firm which has made such definite commitments in order to enter a manufacturing business which will later qualify it, shall not be barred from 8(a)

approval because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon 8(a) approval. This definition is based upon the Walsh-Healy Public Contracts Act, 41 U.S.C. 35–45.

(f) "National buy item" means an item or service purchased to meet the needs of a system where supply control, inventory management, and procurement responsibility have been assigned to a central procuring activity to support the needs of two or more users of the item. Examples include military clothing purchased by the Defense Personnel Support Center of the Department of Defense, paint or hand tools purchased by the Federal Supply Service of the General Services Administration, medical supplies purchased by the Veterans Administration, or studies, evaluations, consulting services or similar services purchased by the headquarters office of a department or agency.

(g) "Negative control," as used in this part is defined in § 121.3(a)(i), formerly § 121.3–2(a)(i), of these regulations which is entitled "Nature of Control."

(h) "Open requirement" means a requirement submitted to SBA by a procuring activity for possible 8(a) award without a particular 8(a) concern identified as a candidate for the award. Open requirements can be for local buy items or national buy items.

(i) "Primary industry classification" means the four digit Standard Industrial Classification (SIC) Code designation which, for an on-going applicant concern, best describes the industry representing the largest proportion of its business revenues for the previous year or, in the case of a start-up applicant concern, that SIC Code designation which best describes the industry in which it intends to do the most business.

(j) "Regular dealer" means a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described in the business plan are bought for the account of such person, kept in stock and sold to the public in the usual course of business. In order to qualify as a regular dealer, the concern must be able to show:

(1) That he has an establishment or leased or assigned space in which he regularly maintains a stock of goods in which he claims to be a dealer; if the space is in a public warehouse, it must be maintained on a continuing, and not on a demand basis;

(2) That the stock maintained is a true inventory from which sales are made; the requirement is not satisfied by a stock of sample or display goods, or by a stock consisting of surplus goods remaining from prior orders, or by a stock unrelated to the supplies which are the subject of the business plan, or by a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made;

(3) That the goods stocked are of the same general character as the goods in which he claimed to be a dealer; to be of the same general character the items to be supplied must be either identical with those in stock or be goods for which dealers in the same line of business would be an obvious source;

(4) That sales are made regularly from stock on a recurring basis; they cannot be only occasional and constitute an exception to the usual operations of the business; the proportion of sales from stock that will satisfy the requirements will depend upon the character of the business;

(5) That sales are made regularly in the usual course of business to the public, i.e., to purchasers other than Federal, State, or local government agencies; this requirement is not satisfied if the applicant concern merely seeks to sell to the public but has not yet made such sales; if government agencies are the sole purchasers, the applicant concern will not qualify as a regular dealer; the number and amount of sales which must be made to the public will necessarily vary with the amount of total sales and the nature of the business; and

(6) That his business is an established and going concern; it is not sufficient to show that arrangements have been made to set up such a business.

This definition is based upon the Walsh-Healy Public Contracts Act.

(k) "Requirement support" means contract opportunities from Federal procuring agencies to acquire articles, equipment, supplies, services, materials or construction work which a section 8(a) business concern could perform.

(l) "Self-marketing" of an item occurs when a section 8(a) marketing firm identifies a requirement that has not been committed to the section 8(a) program and through its marketing efforts causes the procuring activity to offer that specific requirement to the 8(a) program on its behalf.

(m) *Applicability to participating section 8(a) concerns.* Business plans for all participating section 8(a) concerns shall reflect Standard Industrial Classification Code designations consistent with the requirements of § 124.207 of these regulations. Within 120 calendar days of publication of this final rule, the appropriate SBA field office will review the business plan and related documents of each participating section 8(a) concern and within the same 120-day period will notify each concern by certified mail to its address of record of the SIC Code designations for which it has been approved to receive section 8(a) program contract awards. Within 30 calendar days from the date on which the notice is mailed, a participating concern may request in writing that SBA make a correction in the approved SIC Code designations in its presently approved business plan in order to conform the approved business plan to these regulations. Written approval or disapproval of any such request will be provided by SBA within 60 calendar days of the receipt of the request. Any correction of one or more SIC Code designations will be effective only when SBA gives written approval of such request. After the process is completed as to all concerns participating in the section 8(a) program on the effective date of these regulations, any subsequent changes in SIC Code designations appearing in their business plans must be accomplished pursuant to § 124.207(b).

§ 124.101 The section 8(a) program: General eligibility.

(a) In order to be eligible to participate in the section 8(a) program, an individual or an applicant concern must meet all of the eligibility criteria set forth in § 124.102 through § 124.110 hereunder. All determinations made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.106, and 124.107 shall be in writing, setting forth the grounds and relevant facts upon which the determination is based, by the AA/MSB–COD, whose decision shall be final.

(b) It is the intent of the Small Business Administration to limit participation in the section 8(a) program to eligible individuals and concerns, and to process applications for participation in a fair and consistent manner. Toward that end, the Small Business Administration invites the participation of the public in preventing fraud and assuring the integrity of the section 8(a) program. The AA/MSB–COD shall review any determination that an individual or applicant concern is eligible to participate in the section 8(a) program whenever a member of the public submits credible evidence that such determination was based on fraudulent information, or that SBA did not follow the requirements of these regulations in rendering the determination. The AA/MSB–COD shall

determine whether the facts developed during any such review warrant further action; provided that any review of potential misconduct by SBA shall be concluded with a detailed report of the findings to the member of the public whose information gave rise to the review.

§ 124.102 Small business concern.

(a) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined in § 124.4 of the SBA Rules and Regulations (13 CFR 121.4). The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(b) In order to continue to participate in the section 8(a) program once a concern is admitted to the program, the concern must certify to SBA that it is a small business pursuant to the provisions of § 121.4 for the purpose of performing each individual contract which it is awarded. SBA, in turn , will verify such certifications.

(c) Once admitted to the section 8(a) program, a concern will only be permitted to perform 8(a) contracts which are classified according to the standard industrial classification code numbers which appear in its business plan as established pursuant to § 124.207 of these regulations. A participating section 8(a) business concern is free to pursue *any non-section 8(a) contract* regardless of its Standard Industrial Classification Code number which it is capable and competent to perform.

§ 124.103 Ownership.

In order to be eligible to participate in the section 8(a) program, an applicant concern must be one which is at least 51 percent owned by an individual(s) who is a citizen of the United States (specifically excluding resident alien(s)) and who is determined to be socially and economically disadvantaged by SBA.

(a) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual(s) determined to be socially and economically disadvantaged.

(b) In the case of an applicant concern which is a corporation, 51 percent of all classes of voting stock must be owned by an individual(s) determined to be socially and economically disadvantaged.

(c) Part ownership in an applicant concern by nondisadvantaged individual(s) is permitted and may be necessary to insure adequate capital and management for the concern's development. However, any property, equipment, supplies, services and/or financial assistance other than personal services which are sold, rented or donated to the 8(a) concern by such nondisadvantaged individual(s) must be reported to SBA on an annual basis. Such nondisadvantaged individual(s), their spouses or immediate family members may not:

(1) Be former employers of the disadvantaged owner(s) of the applicant concern without prior approval of SBA;

(2) Be affiliated with another business in the same or similar type of business as the applicant concern;

(3) Hold ownership interest in any other 8(a) concern in an amount deemed excessive by SBA;

(4) Exercise negative control over the applicant concern as defined in 13 CFR 121.3(a)(i) (formerly 13 CFR 121.3–2(a)(i)); or

(5) Receive compensation for personal services from the applicant concern as directors or employees which is deemed to be excessive by SBA

(d) Non-section 8(a) concerns in the same or similar line of business are prohibited from having an ownership interest in an applicant concern which is deemed by SBA to cause negative control over the applicant concern, as defined in 13 CFR 121.3(a)(i) (formerly 13 CFR 121.3–2(a)(i)).

(e) A section 8(a) business concern may continue participation in the program subsequent to a change in its ownership. However, any change of ownership of an 8(a) business concern requires the prior written approval of SBA. Continued participation of the 8(a) concern under new ownership requires compliance with all individual and business eligibility requirements of these regulations by the concern and the new owners. Failure of either an individual owner or the concern to maintain compliance constitutes a ground for program termination.

(f) Applicant concerns owned and controlled by an Indian Tribe are eligible for participation in the section 8(a) program if the individuals who manage and control the concern are found to be socially and economically disadvantaged by SBA, and the Tribe is found to be economically disadvantaged by SBA.

(g) Applicant concerns owned and controlled by a Regional Corporation or a Village Corporation as defined in 43 U.S.C. 1602 (Alaska Native Claims Settlement Act, Pub. L. 92–203, December 18, 1971) are eligible for participation in the section 8(a) program if the individuals who manage and control the concern are found to be socially and economically disadvantaged by SBA, and the Regional or Village Corporation is found to be economically disadvantaged by SBA.

§ 124.104 Control and management.

Except in the case of applicant concerns owned and controlled by an Indian tribe or a Regional Corporation or Village Corporation (*see* § 124.103(g)), an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has been (have been) determined to be socially and economically disadvantaged, and such owner(s) must own a greater percentage of the business entity than any nondisadvantaged owner, or in the case of a corporation, more voting stock than any nondisadvantaged stockholder.

(a) Individuals who are not socially and economically disadvantaged may be involved in the management of an applicant concern, and may be stockholders, officers, directors, or employees of such concern. However, such individuals shall not exercise actual control or have the power to control the operations of the applicant or section 8(a) business concern. The existence of control or the power to control shall be determined by the facts of each case.

(b) An applicant concern must be managed on a full-time basis by one or more persons who have been found by SBA to be socially and economically disadvantaged, and such person(s) must possess requisite management capabilities as determined by SBA. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. Any disadvantaged person upon whom section 8(a) eligibility is based, who is engaged in the management and daily business operations of the section 8(a) concern and who wishes to engage in regular outside employment must notify SBA of the nature and anticipated duration of the outside employment prior to engaging in such employment. SBA will review such notification for compliance with the requirement of day-to-day management and control of the 8(a) concern.

§ 124.105 Social disadvantage.

(a) General. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because their identity as a member of a group without regard to their individual qualities. The social disadvantage of individuals must stem

from circumstances beyond their control.

(b) *Members of designated groups.* In the absence of evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); Subcontinent Asian Americans; and members of other groups designated from time to time by SBA according to procedures set forth at § 124.105(d) of this part.

(c) *Individuals not members of designated groups.*

(1) Individuals who are not members of the above-named groups must establish their social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into, and/or advancement in, the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant: education, employment, and business history.

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to business or professional schools; denial of equal access to curricula; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by a employer; social patterns or pressures which have channelled the individual into non-professional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have retarded the individual's business development.

(d) *Minority group inclusion*—(1) *General.* Upon an adequate showing to SBA by representatives of a minority group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the **Federal Register** a notice of its receipt of a request that it consider a minority group not specifically named in section 201 of Pub. L. 95–507 to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the section 8(a) program. The notice shall adequately identify the minority group making the request, and if a hearing is requested on the matter, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AAMSB–COD.

(2) *Standards to be applied.* In determining whether a minority group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine: (i) If the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control, (ii) if the group has generally suffered from prejudice or bias, (iii) if such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95–507, and (iv) if such conditions have produced impediments in the business world for members of the group over which they have no control which are not common to all small business people. If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish a notice under this regulation.

(3) *Procedure.* Once a notice is published under this regulation, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under this regulation, it shall afford a reasonable comment period of not more than thirty (30) days for public comment upon a request. It shall complete the reception of comments, including the holding of hearings within such comment period. Thereafter, SBA shall consider the comments received as expeditiously as possible, and shall render its final decision within 30 days of the close of receipt of information on the matter. Such decision shall take the form of a notice in the **Federal Register**, and SBA shall also inform the subject group representatives who have appeared in the proceeding of such decision in writing at the time it is made.

§ 124.106 Economic disadvantage.

(a) *General.* For purposes of the section 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

(b) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated. Factors to be analyzed depend upon the particular industry in which the applicant concern is involved. Such factors may include, but are not limited to, the following:

(1) *Personal financial condition of the disadvantaged individual.* This criterion is designed to assess the relative degree

of economic disadvantage of the individual in comparison to other individuals, as well as the potential to capitalize or otherwise provide financial support to the business. The specific factors considered are: personal income for at least the past two years; total fair market value of all assets (except that the *equity* value of the individual's primary residence will be considered); and the net worth of all holdings of the individual.

(2) *Business financial condition.* This criterion is designed to evaluate liquidity, leverage, operating efficiency and profitability of the applicant concern using commonly accepted financial ratios and percentages. This evaluation will be used to provide a financial picture of a firm at a specific point in time in comparision to other concerns in the same business area who are not socially disadvantaged. These factors are considered as indicators of a firm's economic disadvantage relative to businesses owned by non-socially disadvantaged individuals. Factors to be considered are business assets, net worth, income and profit. Also, factors to be compared include, but are not limited to: Current ratios, quick ratios, inventory turnover; accounts receivable turnover; sales to working capital; returns on assets; debt to net worth ratio; percentage return on investment; percentage gross profit margin; and percentage return on sales.

(3) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. The factors to be considered are: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; bonding capability.

(4) *Additional considerations.* A comparison will be made of the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business and competitive market area. It is not the intent of the section 8(a) program to allow program participation to concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, have unlimited growth potential and have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

§ 124.107 Potential for success.

To be eligible to participate in the section 8(a) program, an otherwise eligible applicant concern must be determined to be one that with contract, financial, technical and management support will be able to successfully perform subcontracts awarded under the section 8(a) program, and further, with such support, will have a reasonable prospect for success in competition in the private sector within the maximum amount of time that a concern may be in the section 8(a) program (up to seven years). In addition, the AA/MSB–COD must make a determination that the procurement, financial, technical and management support necessary to enable the applicant concern to successfully complete the section 8(a) program is available from SBA or other identified and acceptable sources before the applicant concern may be admitted to the section 8(a) program.

§ 124.108 Additional eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the section 8(a) program application or a credible source regarding criminal conduct by an individual applicant, no further action will be taken on the application until the adverse information has been forwarded through appropriate channels to the SBA's Inspector General for evaluation and that evaluation has been completed. The Inspector General will advise the AA/MSB–COD of his or her findings and the AA/MSB–COD will consider those findings as part of the process of evaluation of a particular application.

(b) *Standard of conduct.* The SBA Standards of Conduct regulations, 13 CFR 105, *et seq.*, apply to eligibility questions involving SBA employees and their relatives.

(c) *Individual eligibility limitations.* An individual's or business concern's eligibility may be used only once in qualifying for section 8(a) program participation.

(1) The AA/MSB–COD may reinstate a former section 8(a) program participant if:

(i) The section 8(a) concern has totally ceased its business operations; and

(ii) The section 8(a) concern voluntarily withdrew from the section 8(a) program due to—

(A) The health of a disadvantaged owner;

(B) Acts of God which destroyed or severely disrupted the operation of such concern; or

(C) Such other circumstances beyond the control of the section 8(a) concern which inequitably interrupted the continued participation of the concern in the section 8(a) program.

(2) Where a section 8(a) concern is reinstated pursuant to paragraph (c)(1) of this section, it will continue in the section 8(a) program for that amount of time which remained in its Fixed Program Participation Term at the time it withdrew from the program. A new Fixed Program Participation Term shall not be established for such concern.

(d) *Manufacturers and regular dealers.* Each applicant concern which intends to manufacture or furnish materials, supplies, articles and equipment in the performance of section 8(a) subcontracts must be determined to be a manufacturer or regular dealer as defined in the Walsh-Healey Public Contracts Act Regulations found at 48 CFR Subpart 22.6.

§ 124.109 Ineligible businesses.

(a) *Brokers and Packagers.* Brokers and packagers are ineligible to participate in the section 8(a) program. These types of businesses do not satisfy the definition of a manufacturer or regular dealer, as stated in § 124.100 of this part.

(b) *Debarred or Suspended Person or Concern.* Individuals or concerns who are debarred, suspended, or are found to be an ineligible bidder by any contracting agency of the Federal Government pursuant to 48 CFR Chapter I, Subpart 9.4 are ineligible for admission into the section 8(a) program during the period of debarrment, suspension, or status as an ineligible bidder. Prior to approval of any applicant concern, the applicant concern will certify that the applicant concern and the disadvantaged individual(s) upon whom eligibility is based is not at that time debarred, suspended or otherwise an ineligible bidder.

§ 124.110 Fixed program participation term.

(a) Every section 8(a) program participant is subject to a Fixed Program Participation Term. A Fixed Program Participation Term and any extension thereof establishes the ultimate time period during which a concern may remain in the section 8(a) program and the conditions of participation, regardless of whether competitiveness is reached by the concern.

(b) The Fixed Program Participation Term must be negotiated between SBA and each small concern which has applied for participation in the program and must be established by mutual agreement prior to the concern's admission to the program.

(c) The provisions of the Fixed Program Participation Term, including the time limitation thereof, will be set

forth in the SBA approved business plan of the section 8(a) concern which must be established prior to the applicant concern's admission to the program.

(d) For concerns applying for entry into the program, the Fixed Program Participation Term will begin on the date of award of the concern's first section 8(a) subcontract.

(e) The maximum Fixed Program Participation Term for any concern is five years.

(f) Not less than one year prior to the expiration of the Fixed Program Participation Term, a concern may request SBA to review and extend its Fixed Program Participation Term for a period not to exceed the difference between the Fixed Program Participation Term established in the business plan and the maximum Fixed Program Participation Term of five years, plus two years. For business concerns which have a Fixed Program Participating Term of one year, a request for extension shall be deemed to be timely if postmarked no later than 10 days subsequent to the receipt by the concern of notification of award of the concern's first section 8(a) subcontract. There may be no further extensions.

(g) The criteria which SBA will use in negotiating a Fixed Program Participation Term or in considering a request for an extension thereof are as follows:

(1) The factors referenced in § 124.106 of these regulations for determining economic disadvantage.

(2)(i) The number and dollar amount, and the progressively decreasing importance, of section 8(a) contract support that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize business plans anticipating lesser amounts of section 8(a) contract support to reach competitiveness.

(ii) In considering whether to grant an extension of a Fixed Program Participation Term, the section 8(a) contract support previously received by the concern will be a factor. An SBA determination that such previous contract support has failed to appreciably contribute toward a timely achievement of competitiveness will be a significant factor in consideration of the request for extension.

(3) (i) The number and dollar amount and the progressively increasing importance of contract support, other than section 8(a) contract support, that it is anticipated will be necessary to achieve competitiveness. SBA will emphasize business plans having greater reliance on this non-section 8(a) contract support to reach competitiveness.

(ii) In considering a Fixed Program Participation Term extension request, the non-section 8(a) contract support previously received by the firm will be a factor. An SBA determination that the concern has failed to progressively increase the importance of such non-section 8(a) contract support during its previous participation in the program will be a significant factor in SBA's consideration of the request for extension.

(4) (i) The length of time that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize program participation for those concerns closer to achieving competitiveness.

(ii) In considering requests for Fixed Program Participation Term extensions, the length of time during which the concern has previously participated in the program will be a factor.

(5) (i) The degree to which it is anticipated that Advance Payments and Business Development Expense will be necessary to enable a concern to successfully complete section 8(a) contracts and the extent to which reliance upon such proceeds will progressively decrease in importance. In order to maximize limited SBA resources and to increase exposure to regular competitive procedures, SBA will emphasize maximum use of conventional governmental and private resources in performing such contracts.

(ii) In considering requests for a Fixed Program Participation Term extension, the previous Advance Payments and Business Development Expense already received by the concern will be a factor. An SBA determination that such Advance Payments and Business Development Expense support has failed to progressively decrease in importance during the concern's previous participation in the program will be a factor toward limiting or denying extension of the Fixed Program Participation Term and the conditions thereof.

(6) (i) The rate at which it is anticipated that a concern will decrease its reliance upon all forms of program support, especially section 8(a) contracts support, in reaching competitiveness at the end of the Fixed Program Participation Term.

(ii) In considering Fixed Program Participation Term extensions, a factor will be the previous rate at which the concern has decreased its reliance upon program support and correspondingly increased its reliance upon conventional governmental and private contract business. An SBA determination that the concern has failed to appreciably improve its rate of business reliance in this manner will be a factor toward limiting or denying the Fixed Program Participation Term extension and the conditions thereof.

(h) No section 8(a) contracts may be awarded to any section 8(a) concern unless it has received and is operating under an SBA approved Fixed Program Participation Term.

(i) Nothing in this section shall be construed to limit SBA from initiating termination, completion or suspension actions, pursuant to §§ 124.112, 124.110(k), or 124.113, respectively, during any Fixed Program Participation Term granted hereunder.

(j) Upon the conclusion of its Fixed Program Participation Term, including any extension thereof, a concern will cease to be a program participant. This cessation of program participation will occur without the necessity of any additional action by SBA. It will not give rise to any rights, claims or prerogatives on behalf of the concern. Cessation of program participation at the conclusion of the Fixed Program Participation Term is not subject to the requirements of section 8(a)(9) of the Small Business Act (15 U.S.C. 637(a)(9)), or any of SBA's implementing rules and regulations.

(k) *Program completion.* (1) When a section 8(a) business concern has substantially achieved the goals and objectives set forth in its business plan prior to the expiration of its Fixed Program Participation Term, and has demonstrated the ability to compete in the marketplace without assistance under the section 8(a) program, its participation within the program shall be determined by SBA to be completed.

(2) In determining whether a concern has substantially achieved the goals and objectives of its business plan and has attained the ability to compete in the marketplace without section 8(a) program assistance, the following factors, among others, shall be considered by SBA.

(i) Positive overall financial trends, including but not limited to:

(A) Profitability;

(B) Sales, including improved ratio of non-section 8(a) sales;

(C) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(D) Ability to obtain bonding;

(E) A positive comparison of the section 8(a) business concern's business and financial profile with profiles of non-section 8(a) businesses in the same area or similar business category; and

(F) Good management capacity and capability.

(3) Upon determination by SBA that a section 8(a) business concern's participation in the section 8(a) program has been completed pursuant to paragraph (k)(1) of this section, SBA shall so advise the firm and shall issue it an order to show cause why its participation in the section 8(a) program should not be deemed to be completed. The section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures of SBA's Office of Hearings and Appeals set forth at Part 134 of these regulations.

(4) Subsequent to the completion of such hearing, based upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AA/MSB–COD shall render a final decision regarding the completion of the section 8(a) business concern's participation in the program. Prior to a final decision, the subject section 8(a) business concern may have full rights of participation in the section 8(a) program.

§ 124.111 Mechanics for extension of a fixed program participation term.

As stated in § 124.110(f), a section 8(a) concern's Fixed Program Participation Term (FPPT) may be extended only once, and only if the application for such an extension is made not less than one year prior to the expiration of the firm's original Fixed Program Participation Term.

(a) *The request.* The section 8(a) concern must make a request for extension in writing by certified mail, return receipt requested, or by registered mail, to the SBA field office servicing its account, not less than one year prior to the expiration of the FPPT, specifically requesting an extension of its FPPT.

(b) *SBA response.* Upon receipt of a timely request, the appropriate SBA field office will forward to the section 8(a) concern all forms needed to process the request. All required forms must be completed and returned to SBA within 45 days of receipt along with a persuasive narrative rationale to establish the basis for justifying the requested extension.

(C) *Narrative rationale.* The narrative rationale submitted by the section 8(a) concern must detail the following:

(1) The firm's progress since admission into the 8(a) program;

(2) Areas where the firm has failed to make progress anticipated when the original FPPT was set;

(3) Reasons for lack of progress;

(4) Benefits to be derived from an extension, other than increase in contract support;

(5) Any extenuating circumstances unique to the firm which cause an extension to be necessary and appropriate;

(6) Any other facts which the firm believes support its request.

(d) *Non waiver of time limits.* Neither the requirement of § 124.110(f) to make a request for an extension of a concern's FPPT not less than one year prior to the expiration of a concern's original FPPT, nor the requirement of § 124.111(b) to return all forms and documentation completed along with the supporting narrative within 45 days may be waived. Failure to meet either time limit will result in denial of an extension of an FPPT.

(e) *Approval authority.* Unless otherwise delegated by the Administrator, the AA/MSB–COD has final authority to approve the concern's request for an extension, and may in his discretion approve an extension less than that requested, set terms and conditions for any extension granted, or deny any extension. The concern will be advised in writing of the Agency's final decision.

§ 124.112 Program termination.

(a) Participation of a section 8(a) business concern in the section 8(a) program may be terminated by SBA prior to the expiration of the concern's fixed program participation term or extension thereof, if any, for good cause. The term good cause as used in the regulation means conduct violative of applicable State and Federal law or regulations or the pursuit of business practices detrimental to business development of an 8(a) concern. Examples of good cause include, but are not limited to, the following:

(1) Failure to continue to meet any one of the standards of program eligibility set forth in these regulations.

(2) Failure by the concern to maintain status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder for each of the Standard Industrial Code designations contained in the participating concern's business plan.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership and control by the persons(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA prior to any changes in ownership and management control.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) Failure by the concern to provide SBA with required quarterly or annual financial statements within ninety days of the close of the reporting period, or required audited financial statements within 180 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(7) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(8) Failure by the concern to provide documents or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials.

(9) Cessation of business operations by the concern.

(10) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(11) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(12) Inadequate performance of awarded section 8(a) procurement subscontracts by the concern.

(13) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(14) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(15) Diversion of funds from the section 8(a) business concern to any other individual, subsidiary, firm, or enterprise which is detrimental to the achievement of the section 8(a) business concern's business plan.

(16) Unauthorized use of business development expense funds and/or advance payment funds. Violation of an advance payment or business development expense agreement.

(17) Failure by the concern to obtain prior SBA approval of any management agreement or joint venture agreement relative to the performance of a section 8(a) subcontract. Violation of any

requirements of a management or joint venture agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(18) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(19) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.

(20) Knowing submission of false information to SBA on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(21) Debarment or suspension of the concern by the Comptroller General, the Secretary of Labor, Director of the Office of Federal Contract Compliance, or any contracting agency pursuant to FAR subpart 9.4, 48 CFR Ch. 1.

(22) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern for any of the following:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970;

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal Antitrust Statute; or

(v) Commission of any felony not specifically listed above by the concern or any of its principals.

(23) Willful failure on behalf of a section 8(a) business concern to comply with applicable labor standards obligations.

(24) Violation of any terms and conditions of the 8(a) program Participation Agreement.

(25) Violation by a section 8(a) business concern, or any of its principals, of any of SBA's significant rules and regulations.

(b) Upon determination by the SBA that a section 8(a) business concern's participation in the section 8(a) program should be terminated for good cause, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures established for SBA's Office of Hearings and Appeals set forth at Part 134 of this title.

(c) Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, pursuant to §§ 134.32 and 134.34 of these regulations, the AA/MSB–COD shall render a final decision regarding the termination, for good cause, of the 8(a) business concern's participation in the program.

(d) After the effective date of a program termination as provided for herein, a section 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. Such concern is obligated to complete previously awarded section 8(a) subcontracts.

§ 124.113 Suspension of program assistance.

(a) Only upon the issuance of an order to show cause why a section 8(a) business concern should not be terminated from the program, the Administrator of SBA or the AA/MSB–COD may suspend contract support and other forms of 8(a) program assistance to that concern for a period of time not to exceed the time necessary to resolve the issue of the concern's termination from the program under the procedures set forth in Part 134 of these regulations. The institution of such a suspension will not occur in conjunction with each proposed termination, but will only occur when the SBA Administrator or AA/MSB–COD determines that the Government's interests are jeopardized by continuing to make assistance available to a section 8(a) business concern and immediate action to protect those interests is necessary.

(b) Immediately upon SBA's determination to suspend a section 8(a) concern, SBA will furnish that concern with a notice of the supension by certified mail, return receipt requested, to the last known address of the concern. If no receipt is returned within ten calendar days from the mailing of the notice, notice will be presumed to have occurred as of that time. The notice of suspension will provide the following information:

(1) The reason for the suspension which will be the grounds upon which the order to show cause has been issued;

(2) That the suspension will continue pending the completion of further investigation or the termination proceeding or some other specified period of time;

(3) That awards of section 8(a) subcontracts, including those which have been "self-marketed" by an 8(a) concern, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or his or her authorized representative to be in the best interest of the Government to do so, and the SBA Administrator or the AA/MSB–COD adopts that determination;

(4) That the concern is obligated to complete previously awarded section 8(a) subcontracts;

(5) That the suspension is effective nationally throughout the SBA;

(6) That a request for a hearing on the suspension will be considered by the Administrative Law Judge hearing the termination proceeding and granted or denied as a matter of his or her discretion. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the participant requests one. However, no such hearing may be granted if the suspension is based upon advice from either the Department of Justice or the Department of Labor that such a hearing would prejudice substantial interests of the Government. A hearing on the suspension will commence as soon as possible following the decision of the Administrative Law Judge to grant a request; but in no case more than 20 calendar days after the Administrative Law Judge's ruling if the request is granted. At the close of such suspension hearing, the Administrative Law Judge will make a recommended decision on the matter to the AA/MSB-COD who will then issue a final decision upholding or lifting the suspension.

(c) Any suspension which occurs in accord with these regulations will continue in effect until such time as the SBA lifts it or the section 8(a) business concern's participation in the program is fully terminated. If all program assistance to a section 8(a) business concern has been suspended under these regulations, and that concern's participation in the program is not terminated, an amount of time equal to the duration of the suspension will be added to the concern's fixed program participation term.

§ 124.201 Processing applications.

It is SBA's policy that an individual or business has the right to apply for section 8(a) assistance, whether or not there is an appearance of eligibility.

§ 124.202 Place of filing.

An application for admission is to be filed, and approved cases are to be serviced in the SBA field office serving the territory in which the principal place of business of the applicant concern is located. Principal place of business means the location at which the business records of the applicant concern are maintained.

§ 124.203 Applicant representatives.

An applicant concern may employ at its option outside representatives in connection with an application for section 8(a) program participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of 13 CFR 103 dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative.

§ 124.204 Requirement support determination.

SBA shall first make a determination that there is a reasonable likelihood of section 8(a) requirements available to support the applicant concern. If the necessary requirement support is not available, the applicant concern shall be informed in writing that no further action can be taken on its application for participation in the section 8(a) program. If the necessary requirements support is determined to be available, the applicant concern may continue to submit the required application forms.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by SBA when making application for admission to the section 8(a) program including but not limited to financial statements and Federal personal and business tax returns.

§ 124.206 Approval and declination of applications for eligibility.

The AA/MSB–COD has final authority over approval or declination of applications for admission to the section 8(a) program. If the AA/MSB–COD declines an application, he or she will notify the applicant in writing giving detailed reasons for the decline and informing the applicant of the right to request a reconsideration within 30 days of receipt of the decline letter. The AA/MSB–COD will also inform the applicant to submit in writing to the field office any subsequent information and documentation pertinent to rebutting the reason(s) for decline. If the application is declined by the AA/MSB–COD on reconsideration, no new application will be accepted within one year of the reconsideration decision.

§ 124.207 Business activity.

(a) Eligible concerns will be approved for section 8(a) program participation according to their primary industry classification, as defined in § 124.100 of this part. The primary industry classification relevant to a given concern and related Standard Industrial Classification Code designations will be stated in a participating concern's business plan upon the concern's entry into the section 8(a) program and will be subject to change thereafter only if a condition of subsection (b) is met. A participating section 8(a) business concern will be eligible to receive only Government contracts pursuant to the section 8(a) program which are classified under the Standard Industrial Classification Codes stated in its business plan. (*See* definition of "business plan," § 124.100(a).) A participating section 8(a) business concern may, however, receive Government contracts classified in other Standard Industrial Classification Codes through other Government procurement procedures. As 8(a) concerns develop, it is essential that they pursue commercial and competitive Government contracts to supplement section 8(a) sales and to achieve logical business progression or diversification.

(b) Requests for changes in Standard Industrial Classification Code designations stated in a business plan will be considered by the relevant SBA Regional Administrator only under the circumstances indicated below.

(1) Such Regional Administrator may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if:

(i) The new Standard Industrial Classification Code designation relates to a unique procedure or product that the section 8(a) concern has developed; or

(ii) SBA determines that an additional Standard Industrial Classification Code designation is needed to correct significant limitations in section 8(a) contract support which result from administrative or regulatory actions by a contracting agency, which are beyond the control of the section 8(a) concern, and which were not contemplated by the original business plan.

(2) The Administrator or his designee may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if the Administrator or his designee determines that absent a Standard Industrial Classification Code designation change, the section 8(a) concern would be unable to achieve reasonable section 8(a) development.

§ 124.301 The provision of requirements support for 8(a) firms.

(a) These regulations govern the mechanics of the provision of requirements (contract) support to section 8(a) business concerns. They are to be read in conjunction with § 124.302 below.

(b) Basic Principles of Requirements Support.

(1) An 8(a) subcontract will be provided to a section 8(a) concern only when consistent with that concern's business development needs.

(2) An 8(a) concern will be provided a section 8(a) contract only when the procurement is consistent with the concern's capabilities as identified in its business plan by means of Standard Industrial Classification (SIC) codes.

(3) The aggregate dollar amount of 8(a) contracts to an 8(a) concern for any Federal fiscal year may not exceed by more than 25 percent the applicable annual 8(a) contract support level approved by SBA as reflected in the concern's business plan. This shall not preclude an 8(a) concern from requesting an increase in its approved 8(a) contract support level on other than an annual basis. Such request must be supported by a revised business plan and evidence that the firm has the capability to perform at the increased level.

(4) SBA does not guarantee any particular level of contract support to a section 8(a) business concern by the approval of its business plan.

(5) SBA is not required to make an award of any particular contract, and should it make an award, SBA is not required to award a contract to a particular 8(a) concern. Nonetheless, SBA will usually reserve a procurement for possible 8(a) award in favor of an 8(a) concern which initially self-marketed the procurement, provided the firm needs the requirement to satisfy its business plan projections without exceeding them.

(6) In cases in which SBA must select an 8(a) concern for possible award from among more than one concern which appear to be qualified to perform the contract, the selection will be based upon consideration of relevant factors, including the following:

(i) Technical capability, including the ability to perform the contract, the concern's organizational structure, the experience and technical knowledge of its key employees, and technical equipment and facilities.

(ii) Financial capacity, including the availability of adequate financial resources or the ability to obtain such resources as required.

(iii) Ability to comply with the required delivery or performance schedules.

(iv) Ability to obtain any necessary bonding.

(v) Any applicable geographic limitations.

(vi) The concern's need for the specific contract to further the development objectives of the concern's business plan, in light of any other potential contracts under consideration.

(vii) The overall likelihood of successful performance of the proposed requirement.

(viii) Past amount of 8(a) contract support received by the concern and the performance record on past 8(a) contracts.

(ix) Current contracts in process, and progress toward timely delivery of those contracts.

(x) Length of time inthe 8(a) program and the proximity of the FPPT date. (xi) Amount of BDE and advance payment support received since entering the 8(a) program and required to perform the present requirement. (xii) Which 8(a) concern initially indentified the procurement, if any.

(7) In cases in which SBA must select an 8(a) concern for possible award of a professional service contract (except CPA audit services) SBA may, in its discretion, arrange for the evalution of technical capabilities of several concerns, which appear to be most qualified, by the procuring agency itself. In such cases, SBA will request a written report of the evaluation including the criteria used, the results found, and an overall evaluation of each concern as technically or not technically acceptable for their particular procurement. SBA will make the final selection.

(8) SBA will not accept for 8(a) award proposed procurements not previously in the section 8(a) program if any of the following circumstances exist:

(i) Public solicitation has already been issued for the procurement as a small business set-aside in the form of an Invitation for Bid (IFB), Request for Proposal (RFP) or a Request for Quotation (RFQ). Providence of a general intent to set aside, such as Procurement Information Notices (PIN's), annual procurement forecasts or past procurements by set aside, is insufficient reasons to preclude the procurement from 8(a) consideration.

(ii) The procuring agency will award the contract by noncompetitive means to a small disadvantaged concern whether or not it is presently in the 8(a) program.

(iii) There is a reasonable probability that a small disadvantaged concern, whether or not a section 8(a) concern, can successfully compete for the contract under conventional competitive procedures.

(iv) SAB has made a written determination that acceptance of the procurement for an 8(a) award would have an adverse impact on other small business programs or individual small business, whether or not the affected small business, is in the section 8(a) program.

(A) In determining whether or not adverse impact exists, SBA will consider relevant factors, including but not limited to:

(*1*) Whether or not SBA's acceptance of a proposed *National* buy requirement is likely to result in SBA's taking an inordinate portion of total procurements in subject industry to the detriment of the small business set-aside program, or

(*2*) Whether or not SBA's acceptance of a proposed *local* buy requirement is likely to result in SBA taking an inordinate portion of total procurements, in subject industry within a given SBA region to the detriment of the small business set-aside program.

(B) SBA presumes adverse impact to exist when a small business concern has been the recipient of two or more consecutive awards of the item or service within the last 24 months, and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(c) Procedures for Obtaining Requirements Support

(1) SBA procurement center representatives (PCR's) will screen proposed procurements for possible 8(a) contracts, in accordance with 13 CFR Part 125.6.

(2) A requirement for possible award may be identified by SBA, a particular 8(a) concern, or the procuring activity itself. Once identified by whatever means, SBA shall verify the appropriateness of the SIC Code designation assigned to the requirement and shall select and nominate to the procuring agency an 8(a) concern for possible award. The selection will be made pursuant to these regulations and will be based on the business plan and such supplemental materials as SBA may request. If the 8(a) concern fails to provide SBA with the supplemental materials requested within any particular time specified by SBA, SBA will make its selection based solely on information contained in the concern's business plan.

(3) SBA's nomination of a section 8(a) concern to perform an indentified procurement shall be communicated to the procuring activity in writing with notice to the 8(a) concern.

(4) If the procuring activity responds to SBA's nomination, or request for commitment, by making a commitment to SBA, SBA will then match the specific needs of the procurement with the specific capabilities of the selected 8(a) concern, relying upon the business plan and such supplemental or updated material as SBA in its discretion shall require. To facilitate matching, and to the extent reasonably available, SBA will obtain from the procuring activity the complete procurement package, which contains plants, specifications, delivery schedules, labor rates and so forth, along with the following:

(i) The title or name or work to be performed or items to be delivered.

(ii) The estimated period of performance.

(iii) The SIC code of the item or service.

(iv) The PSC number used by the Federal Procurement Data Center.

(v) The procuring agency dollar estimate of the requirement (current government estimate).

(vi) Any special requirement restrictions or geographical limitations.

(vii) Any special capabilities or disciplines needed for contract performance.

(viii) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials.

(ix) A list of contractors who have performed on this specific procurement during the previous 36 months.

(x) A statement that public solicitation for the specific procurement has not been issued for small business set aside.

(xi) A statement that the procurement cannot reasonably be expected to be won by a disadvantaged concern under normal competition.

(xii) The nomination of any particular 8(a) concern designated for consideration, including a brief justification, such as one of the following:

(A) The requirement is a result of an unsolicited proposal and the buying activity is unable to justify a sole-source award.

(B) The 8(a) concern through its own efforts, marketed the requirement and

caused it to be reserved for the 8(a) program.

(C) The procuring agency has determined that the recommended concern has unusual technical qualifications to perform.

(5) Within ten working days of a commitment from a procuring activity identifying a particular 8(a) concern, SBA will determine whether a proper match exists, and will contract the procuring activity to arrange for initiation of contact negotiations. A letter accepting the commitment should normally be sent to the procuring activity at this time. Should contract negotiations be successful and result in a proposed award to the 8(a) concern, SBA will provide a Certification of SBA's Competency as a contract provision pursuant to § 124.302(c) of these regulations. Should SBA determine that a proper match does not exist, it will so advise the affected 8(a) concern, and may then select and nominate an alternative 8(a) concern to the procuring activity which, in the opinion of SBA, does match with the procurement, if any such concern exists.

(6) Should a procuring activity offer a contract to SBA as an open requirement, SBA will select and nominate in accordance with these regulations an 8(a) concern which appears to be qualified, subject to the following additional procedures:

(i) If the contract is a local buy item, the portfolio of 8(a) concerns maintained by the SBA district office where all or most of the work is to be performed or the items delivered will be examined initially for selection of a qualified 8(a) concern. If none are found to be qualified, the requirement may be considered for other 8(a) concerns located within the appropriate SBA region, or the requirement may be considered for 8(a) concerns located in immediately adjacent regions.

(ii) If the procurement is a national buy item, it shall be referred to SBA's Central Office. Central Office will allocate national buy requirements to the regional offices on an equitable basis, and regional offices will allocate national buy requirements to the districts on an equitable basis.

§ 124.302 8(a) Contracts and subcontracts.

(a) *General.* It is the policy of SBA to enter into contracts with other government agencies and subcontract the performance of such contract to concerns admitted to the section 8(a) program pursuant to section 8(a)(1)(C) of the Small Business Act, at prices which will enable a company to perform the contract and earn a reasonable profit.

(b) *Performance of work by the 8(a) subcontractor.* To assure the accomplishment of the purposes of the program, each 8(a) subcontractor shall be required to perform work equivalent to the following percentages of the total dollar amount of each subcontract, exclusive of material costs, with its own labor force:

(1) Manufacturing—50 percent.

(2) Construction:

(i) General Construction—15 percent.

(ii) Special Trades, Such as Electrical, Plumbing, Mechanical, etc.—25 percent.

(3) Professional Services—55 percent.

(4) Nonprofessional Services—75 percent.

The 8(a) concern is required to include in its proposal to perform a given contract a statement that it agrees to perform the required percentage of the work with its own labor force. Refusal of the concern to provide such a statement will result in the contract not being awarded.

(c) *Certification of SBA's competency.* (1) SBA will not certify as to its competency, as provided by section 8(a)(1)(A) of the Small Business Act, without first determining that the section 8(a) concern it intends to subcontract to is responsible to perform the contract in question. If SBA determines that the concern lacks the capability, competency, capacity, credit, integrity, perseverance, and tenacity to perform on a specific 8(a) subcontract, the contract will not be awarded. In addition, SBA will also certify that an 8(a) concern is eligible under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35(a) for each individual 8(a) subcontract. An 8(a) concern which has not submitted required financial statements to SBA will be deemed not responsible to receive 8(a) subcontracts.

(2) SBA's determination not to award an 8(a) subcontractor a specific 8(a) subcontract because the concern lacks an element of responsibility, or is ineligible under the Walsh-Healey Public Contracts Act, does not constitute a denial of total section 8(a) program participation for the purposes of section 8(a)(9) of the Small Business Act.

(d) *Contract administration.* SBA may delegate its authority to administer section 8(a) subcontracts to the procuring agency or any Federal agency designated by it. This is done through the use of special clauses in the contract between SBA and the procuring agency, or by letter, as appropriate.

(e) *Contract termination.* (1) A decision to terminate a specific section 8(a) subcontract for default is made by the procuring activity contracting officer in cooperation with SBA. The contracting officer will advise SBA in advance of his/her intent to terminate for default the 8(a) subcontract. SBA may provide whatever program benefits as are reasonably available to the 8(a) concern in order to prevent termination for default of the contract. The contracting officer will be made aware of this effort. If, despite the efforts of SBA, in the opinion of the procuring activity contracting officer grounds for termination continue to exist, he/she may terminate the 8(a) subcontract for default.

(2) In cooperation with SBA, the procuring activity contracting officer may terminate a section 8(a) subcontract for convenience at any time it is determined in the best interest of the government to do so.

(f) *Disputes and appeals.* (1) SBA is not subject to the Disputes Clause of a specific contract, and SBA is not a party to and does not appear at or participate in appeals brought under such a clause in its own behalf or on behalf of an 8(a) concern.

(2) If a dispute between an 8(a) subcontractor and the procuring activity contracting officer arises under the subcontract, it will be decided unilaterally by the procuring activity contracting officer. The 8(a) subcontractor has the right to appeal the decision of the procuring activity contracting officer under the Contract Disputes Act of 1978.

§ 124.401 Advance payments.

(a) *General.* (1) Advance payments are disbursements of money made by SBA to a section 8(a) business concern prior to the completion of performance of a specific section 8(a) subcontract. Advance payments are made for the purposes of assisting the section 8(a) business concern in meeting financial requirements pertinent to the performance of the subcontract. The gross amount of advance payments must be determined by SBA prior to commencement of performance of the contract. Any subsequent change in the gross amount of advance payments must be justified in writing by SBA as to amount and purpose. Advance payments are to be awarded only after all other forms of financing have been considered by SBA and rejected as unacceptable to support performance of the subcontract. Advance payments must be liquidated from proceeds derived from the performance of the specific section 8(a) subcontract to which they pertain. However, this does not preclude repayment of such advance payments from other revenues of the business, except from other advance

payments and business development expenses (as defined hereinafter in these regulations); provided such repayment must occur according to the liquidation schedule established by the subcontract under which the advance payments were made. The proceeds derived from the performance of the specific section 8(a) subcontract must be deposited by the procuring agency in a special bank account established exclusively for the purpose of administering the advance payments. These proceeds will be used to liquidate the advance payments. No withdrawals of such subcontract proceeds from the special bank account may be made by the section 8(a) business concern which are inconsistent with the disbursement schedule established by the subcontract under which the advance payments were made.

(2) Advance payments shall not be made to a section 8(a) business concern in any case in which the section 8(a) business concern has assigned its rights to receive any payment under the specific section 8(a) subcontract to any person or entity, unless such assignment shall be made to SBA or to a Federal agency in regard to the receipt by the section 8(a) business concern of a progress payment for any specific section 8(a) subcontract.

(3) In no event shall the total amount of advance payments for a section 8(a) business concern exceed 90 percent of the outstanding unpaid proceeds of the section 8(a) subcontract to which the advance payments relate.

(4) SBA shall not charge interest on advance payments disbursed pursuant to these regulations.

(b) *Requirements.* (1) Advance payments may be approved for a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(i) A section 8(a) business concern does not have adequate working capital to perform a specific section 8(a) contract.

(ii) Adequate and timely financing is not available on reasonable terms to provide necessary capital.

(iii) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review and copying by SBA and other appropriate Federal officials.

(iv) A company may receive an advance payment on a section 8(a) subcontract only in instances in which that company has no unliquidated advance payments outstanding on another section 8(a) subcontract which is completed, terminated or in default, unless such unliquidated advance payment is due *only* to the contracting agency's delay in making final payment to the section 8(a) concern which has successfully completed the subcontract.

(c) *Procedure.* To be eligible to receive advance payments, a section 8(a) business concern must meet the conditions set forth above and must comply with the following procedure.

(1) A section 8(a) business concern desiring to receive an advance payment in connection with any section 8(a) subcontract shall:

(i) Submit a written request for advance payment to the appropriate SBA Regional Administrator or his designee. Such request must include detailed documentation requested by SBA as evidence to support the need for such funds and proof that working capital financing cannot be found upon terms acceptable pursuant to § 124.401(b)(ii) above, from financing institutions.

(ii) The section 8(a) business concern must select a commercial bank which is a member of the Federal Reserve System in which it must establish a special non-interest bearing bank account for the deposit of payments made to it by the procuring agency pursuant to the performance of the subcontract(s). This special account must be a demand deposit account. The appropriate SBA Regional Administrator shall designate at least two SBA employees to serve as countersignatories on the special bank account.

(A) Disbursements from the account will be made only upon the authorized signatures of the section 8(a) concern and one of the designated SBA employees.

(B) Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(C) At the time that SBA disburses advance payment funds into the special bank account, SBA shall obtain the most superior lien possible upon the special bank account, any property contracted for, supplies material and other property acquired with the advance payment funds.

(iii) The section 8(a) subcontractor must support each request for disbursement of advance payments by submitting to SBA the following:

(A) The original vendor invoice or original payroll record;

(B) A certified statement, dated and signed by the concern's Chief Financial Officer, attesting to the truth and accuracy of the vendor invoice, and/or the payroll records for the requested advance payment including records of direct payroll expenditures, and payroll expenditures for general and adminstrative expenses and overhead;

(C) Certification by the concern that all Federal taxes and FICA payments are current, or a copy of any agreement with the IRS providing for payment of delinquent taxes;

(D) Documentation of overhead and general and administrative rates using projected indirect costs applied to a valid base, which have been properly allocated to direct material, labor, or other direct costs.

(iv) The section 8(a) concern must, as required by IRS regulations, select a Federal Depository into which the Federal withholding and FICA payment will be made. There shall be no change of Federal Depository without obtaining the prior written consent of the SBA. A check shall be prepared for Federal taxes, concurrent with the SBA advance, based on the submitted payroll, in the name of the tax collecting agency or the Federal Depository and signed by SBA and the contractor. If the amount of a check payable to IRS is less than 25 percent of the gross payroll for that period, the concern's Chief Financial Officer shall prepare a statement certifying that the amount designated as payable to IRS or the Federal Depository is true and correct.

(2) Upon a review of all the circumstances, the Regional Administrator of SBA shall have the obligation to decide whether to approve or deny a request for advance payment and the amount thereof. This right of approval may be delegated to appropriate SBA officials within the discretion of the Administrator. The section 8(a) business concern, the bank selected pursuant to above and SBA must execute and Advance Payment Agreement prior to the disbursement of any advance payment which shall provide for advance payments, set forth a liquidation schedule for the advance payments as well as other terms and conditions governing advance payments. Under no circumstances may a liquidation schedule be waived. However, the appropriate Regional Administrator is authorized to modify liquidation schedules. The section 8(a) concern must execute a note evidencing the full amount of the advance payment and a security agreement and/or personal guarantee by one or more of the principals of the concern as collateral for the advance payment.

(d) *Use of advance payment funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds many only be withdrawn

from the special bank account by a section 8(a) business concern exclusively for the purpose of purchasing materials, labor, general and administrative expenses and overhead, and paying progress payments to the subcontractors of the section 8(c) concern for the performance of a specific section of the section 8(a) subcontract at issue.

(2) Under no circumstances may advance payment funds be deposited in interest-bearing accounts, certificates of deposit or other securities.

(3) Advance payment funds shall be disbursed by SBA for deposit into the special account only in such amounts necessary to pay for the immediate needs of a section 8(a) subcontract. Such disbursements shall be made as expeditiously as possible. Such immediate needs shall be documented by the small business concern and verified by SBA prior to disbursement.

(4) All payments to the section 8(a) business concern for work performed or services rendered pursuant to the subject section 8(a) subcontract shall be paid into the special bank account by the procuring agency, and shall be applied by SBA first against the balance of advance payments according to the liquidation schedule. Any amounts remaining in the special bank account may be disbursed to the section 8(a) concern, *provided, however,* that the unpaid balance on the section 8(a) subcontract is sufficient to allow the 8(a) concern to comply with its advance payment liquidation schedule.

(e) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under the following circumstances:

(i) The terms and conditions of the advance payment agreement have not been adhered to by a section 8(a) small business concern.

(ii) The section 8(a) business concern's participation in the section 8(a) program has ended by expiration of the Fixed Program Participation Term and any extension, or has been suspended pursuant to § 124.113 of these regulations or has been terminated by administrative action under section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9).

(2) In the event of cancellation of advance payments to a section 8(a) business concern, all previous advance payments made to that section 8(a) business concern shall become due and payable to SBA prior to the receipt of final contract payment.

§ 124.402 Business development expense.

(a) *Purpose.* Business Development Expense (BDE) funds are made available by SBA at the time of the execution of a specific section 8(a) subcontract for the purpose of assisting a section 8(a) business concern with the performance of that subcontract. The authority to approve the uses and amount of BDE rests with the Adminstrator who has the power to delegate the authority. An award of BDE is justified only if, prior to the execution of the related section 8(a) subcontract, SBA conducts a complete analysis of the written request and determines that the proposed BDE will promote the long term development objectives of the section 8(a) concern as described in the business plan.

(b) At the discretion of SBA, BDE funds may be added to the section 8(a) subcontract price and may be used for the following purposes and in the following order of priority.

(1) *Capital equipment.* For the purchase of capital equipment which has been determined by SBA to be essential to the section 8(a) business concern's performance of a specific section 8(a) subcontract at a fair market price and for which acquisition cannot reasonably be made by other financing means.

(2) *Other capital improvements.* To assist in the acquisition of other necessary production/technical assets or to subsidize the cost of other capital improvements directly related to reduction of production costs, or to increase productivity and/or production capacity in connection with a specific section 8(a) subcontract. This category includes, but is not limited to, such items as quality control systems, inventory control systems, and other business systems.

(3) *Price differential.* To make up the difference between Government's established fair market price and the price required by the section 8(a) contractor to provide the product or service in connection with a specific section 8(a) subcontract. This type of BDE should be granted to a firm only one time for any specific type of requirement and only if the analysis demonstrates that the firm will be able to produce the item/service competitively in the future.

(c) BDE shall not be provided to satisfy:

(1) Price differentials for professional and nonprofessional service firms;

(2) Any contingency arising subsequent to execution of the section 8(a) subcontract for which the BDE is proposed;

(3) Cost overruns;

(4) Entertainment expenses;

(5) The cost of capital equipment and other capital improvements when one of the following conditions exists:

(i) Funds are available from outside sources to the concern, including SBA financing and the personal resources of the principal(s); or

(ii) Adequate and timely financing from outside sources is available at a reasonable rate.

(6) Costs of interest expenses to be borne by the section 8(a) concern.

(d) *Participatory BDE.* Where appropriate and feasible, section 8(a) concerns will participate to the fullest extent possible in funding the acquisition of assets acquired with BDE funds.

(e) *Requirements.* To be eligible for business development expense funds, a section 8(a) business concern must submit a written request to the appropriate SBA Regional Administrator or his designee. The request must include detailed documentation to support the need for funds, proof that adequate financing is not available at current market rates, and such additional information as required by SBA to adequately consider the request.

(f) When BDE, including participating BDE, will be used to purchase capital equipment, the section 8(a) concern shall comply with the following requirements. The section 8(a) concern shall:

(1) Execute and record a lien on the equipment in favor of SBA. SBA will remove the lien on the assets acquired with BDE funds upon successful completion of the section 8(a) subcontract, except in the case of the firm which has outstanding obligations owed to SBA. Upon full repayment of such outstanding obligations, SBA shall release the lien.

(2) Execute a BDE agreement with SBA which among other things convenants that:

(i) The concern will use the funds exclusively for the purposes stated in the BDE approval;

(ii) The concern shall maintain records to substantiate the uses for which BDE funds have been expended; and

(iii) In the event of default on the contract to which the BDE relates, the section 8(a) concern shall be liable for repayment of the full amount of the BDE.

§ 124.403 Letter of credit.

(a) *General policy.* The letter of credit method of payment will be utilized under certain circumstances to disburse advance payments to section 8(a) business concerns performing subcontracts under the section 8(a) program when SBA has made a decision approving the use of advance payments pursuant to the requirements and

conditions provided for in these regulations.

(b) *Eligibility requirements.* SBA may disburse advance payments through the letter of credit method of payment through the Federal Reserve Bank System to a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(1) SBA determines that the section 8(a) business concern may be awarded more than one section 8(a) subcontract during a period of at least one year.

(2) The aggregate amount of letter of credit advance payment funds made to one section 8(a) business concern will exceed $120,000 annually.

(3) The section 8(a) business concern has submitted a schedule of its projected monthly advance requirements for section 8(a) subcontract disbursements, SBA has reviewed it, and SBA has found it to be reasonable.

(4) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(c) *Procedures.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 48 CFR § 32.406.

§ 124.501 Development assistance program.

(a) *General.* Section 7(j)(1) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act. The AA/MSB–COD is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1–2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in section 7(a)(1) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act;

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(a)(11), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of sections 7(a)(11), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under § 124.501(b) above shall include, but not be limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR Part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of services.* (1) The financial assistance authorized for projects under paragraph (b) of this section includes assistance advanced by grant, cooperative agreement, or contract.

(2) To the extent feasible, services available under paragraph (b) of this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and cooperation with other government agencies.* (1) The AA/MSB–COD may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(2) The AA/MSB–COD shall enter into agreements with Federal agencies and departments to further effective sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(3) The AA/MSB–COD shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal funds, in such a way as to further the purposes of section 7(a)(11), 7(j) and 8(a) of the Small Business Act.

§ 124.502 Small Business and Capital Ownership Development program.

(a) *General.* Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital Ownership Development program is vested in the AA/MSB–COD who is responsible for the oversight of the program and activities set forth in this part of these regulations. The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(1) Assist shall business concerns participating in the program to develop comprehensive business plans with

specific business targets, objects, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to (i) loan packaging, (ii) financial counseling, (iii) accounting and bookkeeping assistance, (iv) marketing assistance, and (v) management asssistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to, (i) the preparation of surety bond participation forms; (ii) special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and (iii) preparation of all forms necessary to receive a surety bond guarantee form the SBA pursuant to Title IV, Part B of the Small Business Investment Act of 1958.

§ 124.503 Compliance with the Paperwork Reduction Act of 1980.

(a) In compliance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35) and its implementing regulations, the recordkeeping or reporting requirements and forms appearing in the following sections of this part have been approved by the Office of Management and Budget (OMB) under number 3245–0015: §§ 124.105(b), 124.106(b), 124.106(b)(1) 124.106(b)(2), 124.106(b)(3), 124.202, 124.204, 124.205, 124.403(b)(4), 124.502(a)(1) and 124.502(a)(6).

(b) The recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have also been approved by OMB:

§ 124.103(c) [OMB Approval No. 3245–0145]; § 124.103(e) [OMB Approval No. 3245–0145]; § 124.111(c) [OMB Approval No. 3245–0147]; § 124.112(a)(7) [OMB Approval No. 3245–0205]; § 124.112(a)(17) [OMB Approval No. 3245–0146]; § 124.205 [OMB Approval No. 3245–0015]; § 124.206 [OMB Approval No. 3245–0143]; §§ 124.401(c)(1)(i), 124.401(c)(1)(iii) and 124.403(b)(3) [OMB Approval No. 3245–0148]; § 124.402(e) [OMB Approval No. 3245–0149]; and §§ 124.112(a)(6) 124.205 (financial statements) and 124.502(a)(4) [OMB Approval No. 3245–0151]

Dated: September 15, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–22659 Filed 10–7–86; 8:45 am]

BILLING CODE 8025-01-M

federal register

Wednesday
October 8, 1986

Part III

Department of Education

Office of Postsecondary Education

Availability of the 1986-87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of the 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.

SUMMARY: Institutions and borrowers participating in the National Defense and Direct Student Loan (NDSL) Programs and other interested persons are advised that they may obtain information regarding the *1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Cancellation Benefits (Directory).* Under each program, borrowers may receive cancellation for full-time teaching in a school having a high concentration of students from low-income families. The Secretary has designated the schools for the 1986–87 academic year and they are listed in the *Directory.*

DATE: The *Directory* is available on or before October 8, 1986.

ADDRESS: Information concerning specific schools listed in the *Directory* may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4651, ROB–3), Washington, DC 20202, Telephone (202) 732–3730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the NDSL Program; (2) each of the fifty-seven (57) State and Trust Territory Departments of Education; and (3) each of the ten (10) regional offices of the U.S. Department of Education (see Appendix to this notice for the addresses of the regional offices).

SUPPLEMENTARY INFORMATION: The procedures for selecting schools for cancellation benefits are described in 34 CFR 674.53 and 674.54 of the NDSL program regulations. The Secretary has determined that for the 1986–87 academic year, full-time teaching in the schools set forth in the *Directory* qualifies for cancellation.

The Secretary is providing the *Directory* to each institution participating in the National Defense and Direct Student Loan Programs. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1986–87 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future *Directories.*

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct Student Loan Cancellations)

Dated: October 3, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low Income Schools for Teacher Cancellation Benefits

U.S. Department of Education, Regional Offices

Region I: OSFA/ED, J.W. McCormack Post Office and Courthouse Building, 5 Post Office Square, Room 510, Boston, Massachsuetts 02109, (617) 223–9333, FTS: 223–9333

Region II: OSFA/ED, 26 Federal Plaza, Room 3954, New York, New York 10278, (212) 264–4426, FTS: 264–4426

Region III: OSFA/ED, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19104, (215) 596–0247, FTS: 596–0247

Region IV: OSFA/ED, 101 Marietta Tower, Suite 423, Atlanta, Georgia 30323, (404) 331–4168, FTS: 242–4168

Region V: OSFA/ED, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353–8103, FTS: 353–8103

Region VI: OSFA/ED, 1200 Main Tower Building, Room 2150, Dallas, Texas 75202, (214) 729–3811, FTS: 729–3811

Region VII: OSFA/ED, Executive Hills North, 7th Floor, 10220 North Executive Hills Blvd., Kansas City, Missouri 64153, (816) 891–8055

Region VIII: OSFA/ED, 1961 Stout Street, Room 308, Denver, Colorado 80294, (303) 844–3676, FTS: 564–3676

Region IX: OSFA/ED, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–0137, FTS: 556–0137

Region X: OSFA/ED, Third and Broad Building, Mail Stop 102, 2901 Third Avenue, Seattle, Washington 98121, (206) 442–4027, FTS: 399–0493.

[FR Doc. 86–22765 Filed 10–7–86; 8:45 am]

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federal register

Wednesday
October 8, 1986

Part IV

Environmental Protection Agency

1,3-Dichloropropene; Initiation of Special Review; Availability of Registration Standard; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/51; FRL-3092-4]

1,3-Dichloropropene; Initiation of Special Review; Availability of Registration Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of initiation of special review of pesticide products containing 1,3-dichloropropene; Notice of availability of registration standard.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient 1,3-dichloropropene, Shaughnessey Code No. 029001. The pesticide 1,3-dichloropropene (also called "Telone") has been shown to be an oncogen in mice and rats. The results of oncogenicity studies in mice and rats indicate that increasing doses of 1,3-dichloropropene are associated with increasing tumor rates in both sexes of both species. EPA has determined that 1,3-dichloropropene may pose an oncogenic risk to humans and concludes that it meets or exceeds the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2). Accordingly, a Special Review of products containing 1,3-dichloropropene is appropriate to determine whether additional regulatory actions are required. During the Special Review, EPA will carefully examine the risks and benefits of using products which contain 1,3-dichloropropene and will determine whether the terms and conditions of registration should be revised. A Registration Standard describing EPA's detailed assessment of currently available information on 1,3-dichloropropene and prescribing certain interim risk reduction measures is available to the public. The Registration Standard and accompanying scientific reviews constitute the technical documents in support of this action.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received on or before December 8, 1986.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/51," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Sreet SW., Washington, DC 20460

In person, bring comments to: Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. The 1,3-dichloropropene public docket, which contains all non-CBI written comments, will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Sreet, SW., Washington, DC 20460

Office location and telephone number: Room 711, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7452).

For a copy of the Registration Standard or scientific reviews, to request information concerning the Special Review and Registration Standard public dockets, or to request indices to the Special Review and Registration Standard public dockets, contact Frances Mann (703-557-2805) no later than November 7, 1986, to allow sufficient time for the requestor to receive the material before the close of the comment period.

For information or questions concerning the use and benefits information solicited in Unit III.B. of this Notice, contact Roger C. Holtorf (703-557-7335) concerning economic data, and Janet L. Andersen (703-557-3533) concerning biological information.

SUPPLEMENTARY INFORMATION: This Notice is organized in the following units. Unit I is a description of the Agency's Special Review process. Unit II describes the basis of the Agency's decision to initiate Special Review on 1,3-dichloropropene. Unit III provides a use profile for 1,3-dichloropropene and solicits benefits information from the public. Unit IV sets forth the duty to submit information on adverse effects. Unit V describes the public comment opportunity and the procedures for submission of public comments to the Agency. Unit VI describes the contents of the public docket for this Notice.

I. Background

A. Legal Requirements

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The special review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process is described in 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During the Special Review process the Agency: (1) Announces and describes the basis for the Agency's finding that use of the pesticide meets one or more of the risk criteria set forth in § 154.7; (2) establishes a public docket; (3) solicits comments from the public, and under certain circumstances, from the Secretary of Agriculture and the Scientific Advisory Panel regarding the Agency's analysis and proposed regulatory decisions; (4) reviews and responds to all significant comments timely submitted; and (5) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use. Issuance of this Notice means that potential adverse effects associated with the use of pesticide products containing 1,3-dichloropropene have been identified and will be examined further to determine their extent and whether, when considered together with the benefits of 1,3-dichloropropene, such risks are unreasonable.

A document entitled "Guidance for the Reregistration of Pesticide Products Containing 1,3-Dichloropropene as the Active Ingredient" (Registration Standard) has been issued and is

available to the public, as noted in the unit of this Notice entitled **FOR FURTHER INFORMATION CONTACT.** The Registration Standard provides a detailed explanation of the basis for EPA's decision to start this Special Review and also contains references, background information, data requirements, and other information pertinent to the reregistration of pesticide products containing 1,3-dichloropropene. The Registration Standard also discusses interim risk reduction and label modifications.

B. Preliminary Notification

Registrants of 1,3-dichloropropene products were notified by letter on August 8, 1986, under 40 CFR 154.21(a), that the Agency was considering initiation of Special Review on 1,3-dichloropropene. Comments received in response to that notification are addressed in Unit II.C. of this Notice.

II. Determination To Initiate a Special Review

EPA has determined that all uses of pesticide products containing 1,3-dichloropropene have met the criteria for initiation of Special Review set forth at 40 CFR 154.7(a)(2) in that they "may pose a risk of inducing in humans an oncogenic effect. . . ."

A. Oncogenicity

Two oncogenicity studies, one in B6C3F1 mice and the other in F344/N rats, in which the animals were dosed with technical grade 1,3-dichloropropene, were conducted by the National Toxicology Program. Both studies were positive for oncogenicity. Results of the studies indicate that increasing doses of 1,3-dichloropropene are associated with increasing tumor rates at multiple sites in both sexes of both species. Based on these studies, male rats are the most sensitive to oncogenic effects from 1,3-dichloropropene and therefore, results from the rat study were used to determine the chemical's oncogenic potency. To determine the oncogenic potency of a chemical, EPA uses the laboratory data to calculate an equation which expresses the mathematical relationship between dose and oncogenic effect. Based on this equation, EPA determines a number (Q_1^*) which is then used as a multiplier of the estimated exposure (in units of mg/kg/day) to obtain the estimated 95 percent upper bound on oncogenic risk. For 1,3-dichloropropene, the Q_1^* in male rats is 3.3×10^{-2} $(mg/kg/day)^{-1}$. This potency estimate is equivalent to 1.75×10^{-1} $(mg/kg/day)^{-1}$ for humans. A detailed discussion on the oncogenic response for each species and sex and a determination of the oncogenic potency can be found in the Registration Standard under Unit III.B.

Other available data which add to the weight-of-evidence for the oncogenic potential of 1,3-dichloropropene include:

(1) A 77-week subcutaneous injection study in mice showing an increased incidence of fibrosarcomas at the site of injection;

(2) Several tests using prokaryotic cells showing 1,3-dichloropropene to be a direct-acting mutagen; and (3) 1,3-dichloropropene's structural similarity to vinyl chloride and ethylene dibromide, known oncogens. Based on the above, 1,3-dichloropropene has been classified as a probable human carcinogen.

The Agency has assessed exposure to workers involved in applying, handling or storing 1,3-dichloropropene. Ten studies were evaluated and exposure was estimated for the inhalation route. Sampling was carried out in California and Florida.

The risk assessment considered exposure through inhalation and did not take into account use of a respirator. Risks associated with individual occupational exposures are given below. High and low risk estimates are based on a range of exposures from different work activities or different results from the studies reviewed. A detailed discussion on exposure data reviewed and resulting exposure levels is presented in the Registration Standard under Unit III.B.

Activity	Oncogenicity risk estimates	
	Low	High
Bulk transfer	10^{-5}	10^{-3}
Storage areas	10^{-5}	10^{-3}
Loading	10^{-5}	10^{-3}
Highway transport	10^{-5}	10^{-5}
Private applicator	10^{-4}	10^{-4}
Post treatment	10^{-5}	10^{-3}
24 hours	0	0
36 hours	0	0
72 hours	0	0
Downwind	10^{-5}	10^{-5}

Dermal exposure is also possible, but data are not available at this time to quantify these exposure levels. In addition, the magnitude of exposure to commercial applicators, through inhalation, has not been established at this time.

The Agency is unable to assess potential risks from dietary exposure because it lacks sufficient data on the magnitude of residues of 1,3-dichloropropene, its metabolites, and impurities in raw agricultural commodities.

The Agency has requested, through the Registration Standard and a data call-in, data concerning dermal, inhalation, and dietary exposure to 1,3-dichloropropene. Because of the time element necessary to carry out some of the studies the Agency does not expect to complete its risk/benefit analysis of 1,3-dichloropropene until late in 1988.

B. Additional Grounds for Concern

Technical 1,3-dichloropropene consists mostly of 1,3-dichloropropene but also contains small amounts of 1,2-dichloropropane and other chlorinated materials. Due to the high application rates associated with the use of 1,3-dichloropropene, all components of the technical chemical are of concern with respect to ground water contamination.

Available data suggest that 1,3-dichloropropene and 1,2-dichloropropane have the potential to reach ground water. Information from the California State Water Resource Control Board shows that 1,2-dichloropropane is being found in both shallow and deep wells throughout the State. Monitoring data from Maryland, Massachusetts, New York, and Washington also show findings of 1,2-dichloropropane in ground water. Monitoring data from New York have also shown positive results for 1,3-dichloropropene in ground water.

Only limited data are available on the chemical properties and environmental fate of 1,3-dichloropropene. Also, only limited monitoring information concerning the other components or degradates of 1,3-dichloropropene is available.

C. Interim Risk Reduction Measures

Because of the Agency's concerns, the Agency has set forth its determination in the Registration Standard that registrants should change product labeling. These changes include:

1. "Restricted Use" classification.
2. A Cancer Hazard Warning.
3. Additional precautionary statements.
4. Protective clothing/equipment requirements.
5. A 72-hour field reentry interval.

The exact labeling language on 1,3-dichloropropene labeling is presented under Unit V.B of the Registration Standard. These label precautions should appear on labeling of all products in channels of trade by October 30, 1988.

D. Comments in Response To 40 CFR 154.21 Notification

The Agency received nine responses to the notification which was sent to all

registrants in accordance with 40 CFR 154.21. The comments and responses are discussed below:

1. *Comment.* The oncogenicity studies cited are not persuasive because the product tested is not remotely comparable to the product currently being produced. The amount of 1,2-dichloropropane, an impurity, has been reduced and the stabilizer, epichlorohydrin, has been replaced with another substance not believed to be oncogenic.

Agency response. The Agency is aware of the differences between the formulation tested in the NTP oncogenicity studies and the formulation currently being produced. Both 1,2-dichloropropane and epichlorohydrin have been shown to be oncogenic. The Agency's rationale as to why the oncogenic response seen in the NTP studies was a result of 1,3-dichloropropene and not epichlorohydrin has been thoroughly addressed in Unit III.B of the Registration Standard. The impurity, 1,2-dichloropropane, produced liver tumors in mice and was marginally positive for mammary tumors in female rats. The oncogenicity studies on 1,3-dichoropropene showed that the chemical produced tumors at multiple sites in both sexes of the rat and mouse. The Agency believes that the oncogenic response was caused by 1,3-dichloropropene and not by either the impurity 1,2-dichloropropane or epichlorohydrin.

2. *Comment.* The relevance of the NTP studies in rats and mice to humans is questioned because the major route of human exposure appears to be through inhalation. The oncogenic study in rats and mice involved oral intubation at doses significantly exceeding concentrations of 1,3-dichloropropene in air that could potentially be encountered by unprotected humans.

Agency response. The Agency would prefer to use data from a chronic inhalation study because the exposure route is through inhalation. However, since a chronic inhalation study is not available, the Agency has chosen to use the results from the oral chronic oncogenic studies. Upon receipt of chronic inhalation data the Agency will reevaluate the oncogenic potential for 1,3-dichloropropene. The Agency recognizes the differing routes of exposure for the test animals and humans and has taken this difference into account in its exposure estimates. (See Unit III.A of the Registration Standard.)

3. *Comment.* Several comments questioned the relevance of certain evidence cited by EPA to support its assessment of the oncogenic potential of 1,3-dichloropropene.

a. While agreeing that a 77-week subcutaneous injection study in mice showed an increased incidence of fibrosarcomas at the site of injection, a comment points out the absence of oncogenic effects in a study where the same test substance was applied dermally.

b. Concerning tests using bacteri which showed 1,3-dichloropropene to be a direct-acting mutagen, a comment argued that available data suggest that the mutagenic compound is a contaminant or degradation product of 1,3-dichloropropene, rather than 1,3-dichloropropene itself. The comment further stated that data also clearly demonstrate that bacteria are protected from the mutagenic properties of 1,3-dichloropropene by glutathione, a protective molecule that is found in much higher concentrations in mammaliam cells than in bacterial cells.

c. A comment points out that while there is some structural similarity between 1,3-dichloropropene and vinyl chloride, a known human oncogen, the metabolic and excretory pathways of the chemicals are markedly different.

Agency response. The Special Review is being initiated because of the oncogenic effects demonstrated in the NTP mouse and rat chronic oncogenicity studies. Although EPA thinks that certain additional data—the subcutaneous injection study, the bacterial mutagenicity assays, and the structural similarities of the 1,3-dichloropropene and vinyl chloride—add weight to the Agency's conclusions on oncogenicity, these other studies are not necessary to establish that 1,3-dichloropropene is an oncogen. Therefore, the Agency does not feel it necessary to delay initiation of the Special Review in order to conduct a detailed evaluation of these comments. The Agency is currently reviewing data submitted in support of the above comments and will address them during the Special Review.

4. *Comment.* The in-life portion of a chronic inhalation study in both the rat and mouse, as well as gross necropsies, has been completed. Based on observations, no oncogenicity in either species has been noted.

Agency response. Without the histopathological examination of the animals treated in the chronic inhalation study, the gross necropsies offer little scientific evidence concerning 1,3-dichloropropene's oncogenic potential through inhalation. The results of this study will clearly be relevant to the Special Review but there is currently insufficient information available from this study at this time to consider it in the Agency's decision whether to initiate a special review.

5. *Comment.* A comment suggests the Agency's estimated risk to workers of contracting cancer from a lifetime of exposure to 1,3-dichloropropene appears to be premised, in part, on product misuse.

Agency response. The exposure estimates used by the Agency were based on actual exposure studies conducted with 1,3-dichloropropene. There is no evidence that product misuse took place although the upper ranges of exposure could be due to mishandling or poor use practices. It should be noted, however, that all exposure levels were found to be unacceptable.

6. *Comment.* The oncogenic risk depends on the level of exposure. Because there are no detectable residues of 1,3-dichloropropene in treated raw agricultural commodities, and the total number of workers exposed to 1,3-dichloropropene is very small, the potential risk is not sufficient to justify a Special Review.

Agency response. Further data will show whether there is a significant risk from dietary exposure. EPA currrently lacks adequate data to characterize the level of dietary exposure. When initially registered, all uses of 1,3-dichloropropene were considered nonfood uses because residues of 1,3-dichloropropene were not expected to be present in food crops. The Agency, however, no longer considers these uses of 1,3-dichloropropene on fields in which food crops will be planted to be nonfood uses. Available residue data are inadequate to make a determination if residues of 1,3-dichloropropene, its metabolites, or formulation impurities will be present on raw agricultural commodities as a result of use of 1,3-dichloropropene. The Agency considers the fact that the total number of workers who handle 1,3-dichloropropene is very small is not relevant to the initiation of the Special Reviewbut will be taken into consideration during the risk/benefit analysis and regulatory options phases of the Special Review.

7. *Comment.* As an alternative to initiation of a Special Review, a comment suggested several additional label precautions to further safeguard workers.

Agency response. The Agency encourages registrants to propose risk reduction measures at any time during a Special Review. The Agency's preliminary evaluation of the comment's proposals is that they are insufficient to cause the Agency not to initiate a

Special Review. Therefore, the Agency considers it prudent to initiate the Special Review, obtain public comment, and consider the proposed risk reduction measures while the Special Review is underway.

8. *Comment.* One comment claimed that the Agency must differentiate between ground water and drinking water and that there is no evidence that 1,3-dichloropropene would contaminate drinking water from agricultural uses. There are ample data showing that 1,3-dichloropropene is broken down very quickly to non-toxic degradates. The comment argued that residues of 1,2-dichloropropane in ground water are a result of use of pesticide products which contained large amounts of this chemical. Because these products are no longer used and levels of the impurity 1,2-dichloropropane in 1,3-dichloropropene continue to be reduced, the data showing residues of 1,2-dichloropropane in ground water are not relevant.

Agency response. Although EPA recognizes that not all ground water is currently being used as a source of drinking water the movement of a pesticide in a ground water aquifer cannot be accurately predicted at this time. Therefore, there is a possibility that a pesticide which has contaminated ground water today may be found in drinking water tomorrow.

The Agency has reviewed all available data in its files concerning the environmental fate of 1,3-dichloropropene and remains concerned about contamination of ground water by 1,3-dichloropropene, its impurities and degradates. While the Agency is currently reviewing data submitted in support of the above comment, the contamination of ground water was not a criterion for initiating a Special Review but rather an additional concern of the Agency. The Agency does not think it necessary to delay initiation of the Special Review while reviewing these studies.

9. *Comment.* Several comments discussed the benefits aspects of 1,3-dichloropropene.

Agency response. The Agency is aware there are benefits from the use of 1,3-dichloropropene. However, benefits are not a basis for initiation of a Special Review. Upon initiation of the Special Review, the Agency will review and evaluate the benefits of 1,3-dichloropropene in its risk/benefit analysis.

III. Use and Benefits Information

A. Use Profile

1,3-Dichloropropene is a broad spectrum soil fumigant capable of controlling many plant parasitic nematodes and some pathogens, insects, and weeds. It is federally registered for use on over 190 sites. Usage is in the range of 34 to 40 million pounds active ingredient per year. The major use of 1,3-dichloropropene is for nematode control on crops grown in sandy soils of the Eastern, Southern, and Western United States. Use sites include field crops, floral crops, grasses and turf, small fruits, vegetables, ornamentals, and various fruit and nut trees.

B. Benefits Information

EPA believes that cancellation of 1,3-dichloropropene could have significant effects on at least the following 10 major uses, which comprise over 90 percent of annual usage. Ranked in order of usage, they are potatoes, tomatoes, carrots, tobacco, pineapples, crucifers, sugar beets, cotton, citrus, and nursery stock. During the course of this Special Review, the Agency will focus its benefits analysis on the major uses identified above and any other uses on which the Agency has benefits information. For those uses on which the Agency lacks benefits information, the Agency will consider the benefits as marginal unless additional information is received during the public comment period indicating otherwise.

The user community, registrants, applicants, other government agencies, and the interested public are encouraged to submit data to support any benefits claims on any of the registered uses. Persons who desire to submit benefits information should submit the following information for each crop addressed, along with any other relevant information they desire to submit.

1. Comparative Efficacy Reports

Field trial results comparing 1,3-dichloropropene with chemical and nonchemical alternatives at recommended dosage rates and methods of application or implementation may be submitted. Field trials should include controlled plots where no nematode control is conducted. Field trials should be conducted in accordance with good agricultural practices such as those described by the Society of Nematology. Results should include:

a. All growing conditions and other pertinent factors having an impact on field trial results (i.e., soil types and conditions, location, and pest presence).

b. Data relating to the degree or percent of pest control and/or reduction in damage achieved, plus comparative yield and quality data using acceptable agricultural practices, plot designs, and statistical analyses comparing 1,3-dichloropropene with possible alternatives tested.

c. Data on nontarget organisms affected (e.g., predators, parasites, pathogens and other introduced or endemic species) by 1,3-dichloropropene and the other pesticides or pest management programs tested (e.g., Integrated Pest Management (IPM)).

d. Data on the development of resistance to 1,3-dichloropropene or its alternatives by target pests.

2. Pesticide Profile Information

a. Copies of the most recent State recommendations for the crop(s) in question, listing 1,3-dichloropropene and any alternative pesticides and/or other nonchemical pest management programs.

b. Data on pesticide or pest management program characteristics that determine the choice of pesticides or other control strategies including their restrictions, limitations, and benefits.

c. Pest spectrum (species or groups) controlled by each pesticide or pest control strategy.

d. Pest management programs currently used by growers and any advanced research programs which could modify pest management practices within the next two or three growing seasons.

e. Information on how the crop is grown (crop management) and crop development (phenology) in relation to pest biology and population dynamics.

3. Economic Data

a. For each crop addressed, usage of 1,3-dichloropropene and any alternatives (preferably by target pest(s)) in terms of acres treated, number of applications per season, and pounds of active ingredient (quantities expressed by State or region are preferable to national totals). Non-chemical approaches should also be addressed.

b. Actual application rate(s) (individual amount or a range where appropriate) in terms of active ingredient per acre or similar unit.

c. Retail price of 1,3-dichloropropene and alternatives in terms of dollars per pound of active ingredient.

d. Cost of application in terms of dollars per acre or similar unit. When custom applied, submit rates charged. When grower applied, use rates as specified in crop production budgets.

e. Economic profile of current users of 1,3-dichloropropene and of

"downstream" processors potentially affected by price or supply shifts of the crop in question (e.g., pineapple processors).

f. Enterprise budget data (costs and returns) for typical users.

g. Price elasticity of demand (raw commodity and at retail level) for the crop in question.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. For further information on this requirement consult the Agency's enforcement policy for section 6(a)(2), published in the **Federal Register** of July 12, 1979 (44 FR 40716). The registrants of 1,3-dichloropropene products must submit immediately published or unpublished information, studies, reports, analyses, or reanalyses regarding adverse effects associated with 1,3-dichloropropene, its impurities, metabolites and degradation products in humans or animal species, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. In light of this Special Review and the requirements of FIFRA section 6(a)(2), the registrants should notify EPA of the results of any studies on 1,3-dichloropropene currently in progress to the extent specified in the section 6(a)(2) enforcement policy cited above. Specifically, information on any adverse toxicological effects of 1,3-dichloropropene, its impurities, metabolites, and degradation products must be submitted.

V. Public Comment Opportunity

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing 1,3-dichloropropene. The Agency is providing a 60-day period to comment on this Notice. Comments must be submitted by December 8, 1986. The Agency is particularly soliciting comments on the subjects listed in Units III and IV and on the 1,3-dichloropropene Registration Standard. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS** to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–30000/51.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding 1,3-dichloropropene. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

The Agency has established a public docket (OPP–30000/51) for the 1,3-dichloropropene Special Review. This public docket will include: (1) this Notice; (2) any other notices pertinent to the 1,3-dichloropropene Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the pre-Special Review registrant notification, this Notice, and any other Notice regarding 1,3-dichloropropene submitted at any time during the Special Review process by any person outside government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on 1,3-dichloropropene; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

Dated: September 30, 1986.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

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Part V

Environmental Protection Agency

Notice of Preliminary Determination To Cancel Registrations of Alachlor Products Unless the Terms and Conditions are Modified; Availability of Technical Support Document and Draft Intent To Cancel

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/44B; FRL-3092-5]

Preliminary Determination To Cancel Registrations of Alachlor Products Unless the Terms and Conditions Are Modified; Availability of Technical Support Document and Draft Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination; notice of availability.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing alachlor and discusses the Agency's assessment of the risks and benefits associated with the pesticidal uses of alachlor. EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor as published in the **Federal Register** of January 9, 1985 (50 FR 1115). This Notice announces the Agency's preliminary determination to allow continued use of registered alachlor products under modified terms and conditions. In addition, this Notice announces the availability of the Alachlor Technical Support Document (TSD) for this action and the draft Notice of Intent to Cancel.

DATE: Written comments must be received on or before December 8, 1986.

ADDRESSES: Submit three copies of written comments, bearing the document control number "OPP-30000/44B" by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The alachlor public docket, which contains all non-CBI written comments and the corresponding index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: David E. Giamporcaro, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0481)

Copies of the Alachlor Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION:

I. Background and Regulatory History

Pesticide products containing the active ingredient alachlor (2-chloro-2',6'-diethyl-N-(methoxymethyl) acetanilide) have been registered in the United States since 1969 by Monsanto Chemical Company. EPA records indicate that there are nine federally registered products containing alachlor.

Alachlor is a selective herbicide used for control of many preemergent broadleaf weeds and grasses. Registered uses include selective weed control in cultivated agricultural land and woody ornamentals. In the United States, usage of alachlor is estimated at 80 to 84 million pounds active ingredient per year. Approximately 94 percent of alachlor use is on three sites: corn (63 percent), soybeans (28 percent), and peanuts (3 percent).

EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor, hereafter referred to as Special Review, which was published in the **Federal Register** of January 9, 1985 (50 FR 1115). That Notice also announced the availability of the Alachlor Position Document 1 (PD-1). The Special Review was initiated because pesticide products containing alachlor met or exceeded EPA's then applicable oncogenicity risk criterion under 40 CFR 162.11(a)(3). Specifically, EPA determined that exposure to pesticide products containing alachlor resulted in increased incidences of tumors at multiple sites in two species of laboratory animals. Subsequently, the risk criteria in 40 CFR 162.11 were superseded by new criteria set forth in 40 CFR 154.7(a)(2). For the reasons set out in Unit III of this Notice, the Agency has determined that alachlor exceeds the new criterion for oncogenicity as well.

The basis of EPA's decision to initiate the Special Review on alachlor is further detailed in a document entitled "Guidance for the Interim Registration of Pesticide Products Containing Alachlor as an Active Ingredient" (Registration Standard) which was issued in November, 1984 and in the PD-1. In the PD-1, EPA solicited comments on the risks and benefits associated with all the uses of alachlor.

Based on information received in public comments, as well as on additional analyses performed since the Special Review process began, EPA has made a preliminary determination to cancel the registrations of products containing alachlor unless certain modifications to the terms and conditions of registration are made by the registrants. EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's actions is explained more fully in the Alachlor TSD. The TSD also contains references, background information, and other information pertinent to the reregistration of pesticide products containing alachlor. Copies of the TSD are available to the public upon request from the contact person listed at the beginning of this Notice.

In addition, copies of a draft Notice of Intent to Cancel Registrations of Alachlor Products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). The draft Notice of Intent to Cancel contains the provisions regarding disposition of existing stocks, compliance by intrastate producers, procedures for requesting a cancellation or denial hearing, and for amending registrations.

In accordance with sections 6 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136, et seq.), EPA is sending copies of this Notice, the TSD, and the draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. The same documents will be sent to all registrants and applicants for registration of alachlor products. EPA is also providing a 60-day public comment period on these documents. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory position and actions are appropriate.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA. Before a product can be registered it must be shown that it can be used without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects on human health or the environment. The Special Review process is governed by 40 CFR Part 154.

Through the Special Review process the Agency (1) announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory decision based on evaluation of the pesticide's risks and benefits; (4) solicits comments from the public on the proposed decision and issues concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the Scientific Advisory Panel; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that potential adverse effects and benefits associated with the use of pesticide products containing alachlor have been assessed and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from exposure to alachlor outweigh the benefits of its use.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

EPA has considered information relating to the risks of continued use of alachlor as well as the benefits to the agricultural economy derived from use of the chemical.

In response to the Notice of Initiation of Special Review and the Alachlor PD 1, the Agency received new data on worker, dietary and ground and surface water exposure. While these data have certain limitations, which have prompted the Agency to require additional data, useful information can be derived from them. These data, their limitations, and additional data requirements are summarized below and discussed at length in the Alachlor TSD.

Based on an assessment of the data currently available, the Agency believes that the risks to farm workers, and from dietary and ground and surface water exposure, are less than were estimated in the Alachlor PD 1. Nonetheless, the Agency believes that the risks to users of alachlor remain substantial, and that these risks can be reduced to reasonable levels by the measures proposed in this Notice. The following discussion summarizes the information contained in the Alachlor TSD.

A. Oncogenicity Studies

The Special Review on alachlor products was initiated in 1985 because laboratory animal feeding studies demonstrated oncogenic effects in two species. One study (Daly, 1981a) was conducted in mice. It showed a statistically significant increase in lung tumors in female mice at the highest dose. Three chronic feeding studies (Daly, 1981b; Stout, 1983a; Stout, 1983b) were conducted in the Long-Evans strain of rat. These studies showed statistically significant increases in stomach, thyroid, and nasal tumors in both sexes. On the basis of this information, EPA classified alachlor as a Group B2 carcinogen, probable human carcinogen, under EPA's Carcinogen Risk Assessment Guidelines (EPA, 1986).

No new oncogenicity data were submitted in response to the Alachlor PD 1. The registrant submitted comments which questioned the determination that alachlor was oncogenic in mice, based principally on the high spontaneous rate of lung tumors in the CD–1 strain of mice.

The literature references cited by the registrant do not, however, support its contention. One of the cited references showed a marked increase in lung tumors in female CD–1 mice between 18 and 22 months. The alachlor study was an 18-month study, and the marked late increase in lung tumors observed in the cited study may have limited relevance to its interpretation. Furthermore, the incidence of lung tumors in the female mice exposed to the high alachlor dose was above the average incidence rate from the historical control data for this strain of mouse, and was barely within the high end of the historical control 12 range.

The comments submitted in response to the Notice of Initiation of Special Review and the Alachlor PD–1 have not provided a basis for the Agency to change its determination that alachlor is a demonstrated animal oncogen with the potential to be a human oncogen. The Agency is therefore proceeding with the Special Review of alachlor products.

B. Exposure and Risk Determination

1. Applicator Exposure and Risk

The Agency's estimation in the Alachlor PD–1 of the risk to ground and aerial applicators and to mixer/ loaders from exposure to alachlor was based on exposure data submitted by the registrant which measured worker exposure during aerial and ground applications of the emulsifiable concentrate, microencapsulated, and granular formulations. Dermal exposure was assessed by measuring residue deposits on gloves or gauze pads attached to the workers' clothing (patch data). (Inhalation exposure was considered to be insignificant compared to dermal exposure). It was further assumed that protective clothing such as coveralls and rubber gloves would reduce exposure by 80 percent. The exposure estimates assumed a 50 percent dermal absorption rate for the emulsifiable concentrate, and 12 percent for the microencapsulated and granular formulations. The Agency also estimated the number of days per year that an applicator would be exposed. These ranged from 1 to 6 days for private farmers and up to 30 days for commercial applicators. Based on these data and assumptions, the Agency calculated the 95 percent upper bound risk estimate for various categories of users, including private farmers, commercial applicators, aerial applicators, and flaggers. These estimates showed that commercial ground applicators exposed for 30 days per year could face a lifetime risk of $1x10^{-3}$. The risk to most classes of farm users ranged from 10^{-3} to 10^{-6}.

In response to the Notice of Initiation of Special Review and the Alachlor PD 1, the registrant submitted biomonitoring

data for applicators, a monkey metabolism study, and a dermal absorption study. Based on these data, as discussed below, the Agency has determined that exposure and, consequently, risk to users of alachlor products is less than was previously estimated in the PD–1.

Several factors derived from the new studies were important to the Agency's revised exposure assessment. EPA believes that biomonitoring data, if supported by adequate and appropriate metabolism studies, generally provide a better measure of actual dosage received in the body than patch data. In this instance, the monkey metabolism study submitted by the registrant supported the use of the biomonitoring data. EPA used the biomonitoring data together with the patch data previously submitted by the registrant and surrogate patch data compiled from open literature studies to calculate a range of exposures that the Agency believes more accurately reflects applicator exposure than the estimates included in the PD–1. The dermal absorption study showed a 24 percent dermal absorption rate for the emulsifiable concentrate formulation as compared with the 50 percent estimated in the PD–1. In addition, the estimate of the number of days per year that commercial applicators apply alachlor has been revised downward, from 30 days to 15 days, based on data submitted by the registrant.

Based on these new data, EPA has reestimated the range of risks for alachlor users. The lifetime risk estimates assume 40 years of exposure and a 70-year lifespan. The following risk estimates are applicable to mixing/loading and ground boom application.

User category	Number of days exposed per year	Risk estimates
Private farmers	1	4×10^{-5} to 4×10^{-7}.
Private farmers	3	1×10^{-4} to 1×10^{-6}.
Commercial applicators	15	6×10^{-4} to 6×10^{-6}.

The Agency is also proposing to allow aerial application of alachlor to be reinstated on the label. The registrant voluntarily removed aerial application from the label prior to the issuance of the Alachlor PD–1. Exposure data subsequently received from the registrant and available in the published literature show that aerial application results in less exposure than ground boom application. The Agency has estimated, however, that human flaggers receive high exposure due to the nature of aerial application. EPA is therefore proposing to prohibit the use of human flaggers and to allow aerial application to be performed using mechanical flaggers only.

2. Dietary Exposure and Risk

In the Alachlor PD–1, dietary exposure was calculated for alachlor and one class of its metabolites, 2,6-diethylaniline (DEA). The total dietary exposure to the U.S. population was estimated two ways: (1) By assuming all crops contain alachlor residues at the tolerance levels, and (2) based on actual residue data assuming 100 percent of the crop is treated. Exposure was estimated to be 6×10^{-4} mg/kg/day using the first method, and 4×10^{-4} mg/kg/day using the second method. These estimates were believed to underestimate actual exposure because analytical methods available at the time could detect only one of the classes of alachlor metabolites, diethylaniline (DEA). The Agency required the development of an analytical method capable of detecting the other major class of metabolites, hydroxyethylethyl aniline (HEEA).

Based on these exposure estimates, the Agency calculated that the upper 95 percent bound on risk from dietary exposure to alachlor ranged from 1×10^{-4} to 1×10^{-5}.

In response to the Alachlor Registration Standard and Notice of Initiation of Special Review, the registrant submitted residue data for alachlor and two major classes of metabolites, DEA and HEEA, on the following crops and food sources: Corn, eggs, meat, milk, peanuts, poultry, and soybeans. For the remaining crops for which residue data had been required in the Alachlor Registration Standard (i.e., beans, cottonseed, peas, sorghum, and sunflower seeds), data were submitted for alachlor and the DEA metabolites.

These data showed that exposure from alachlor residues in meat, milk, poultry, and eggs had been overestimated in the PD 1. Instead of accounting for 50 percent of total dietary exposure estimated in the PD–1, these sources were found to account for only 4.2 percent of total exposure based on the actual percentage of these items treated with alachlor.

The new residue data submitted to the Agency also showed that total dietary exposure had been overestimated in the Alachlor PD–1. EPA recalculated alachlor residue levels, and corresponding dietary risk, assuming 100 percent of the crop treated, and on the basis of a best estimate of the actual percentage of the crop treated. The dietary risk ranged from 2×10^{-5} to 2×10^{-6}, respectively.

Generally, the Agency believes these risks to be reasonable in light of the benefits of alachlor. However, the Agency has requested additional residue data from the registrant on processed and cooked peas, processed dry beans, and processed lima beans. If these data indicate potential risks inconsistent with the Agency's current estimates, the Agency may reevaluate its regulatory position concerning these crops.

3. Ground and Surface Water Exposure and Risk

In the Alachlor PD–1, EPA indicated its concern about ground and surface water contamination based on monitoring data from three States and Ontario, Canada. These data showed that levels of alachlor in ground water most likely attributable to normal use of the herbicide ranged from 0.01 to 16.6 ppb. Levels in surface water ranged from 2 to 5 ppb.

Additional ground water monitoring data were received in response to the Alachlor PD–1. Data were submitted by the registrant, as well as by the United States Geological Survey (USGS), and the Association of County and State Agencies. The registrant submitted the results of a ground water sampling study of 243 wells. The study found detectable levels of alachlor in only 2 percent of the wells (6 out of 243 wells). The concentrations in these wells ranged from 0.2 to 6.0 ppb. The remaining 237 wells contained no detectable levels of alachlor (<0.2 ppb).

The data submitted by the USGS and the Association of County and State Agencies found alachlor contamination in ground water in nine States sampled. The concentration of alachlor found ranged from 0.1 to 16.6 ppb with a typical range of 0.2 to 2.0 ppb.

These ground water monitoring data are not sufficient to assess properly the extent of alachlor contamination nationwide. The available studies do not provide a statistically representative data base, particularly in light of the large volume of the herbicide used in the United States, and the number of regions in which it is used. Several additional monitoring studies are currently underway. The Agency will continue to assess the extent of exposure to alachlor in ground water and the degree of risk from such exposure during this Special Review.

The Agency has also assessed additional surface water monitoring data submitted in response to the PD–1, including data from over 60 sites across the country. These data show that the levels of alachlor in drinking water

sources supplied by surface water are low.

The registrant also submitted new surface water monitoring data. Raw and finished water at 24 community water supplies (CWS) was monitored. Alachlor was detected in weekly composite samples in 42 percent of the CWS's (14 of 24). The highest alachlor concentration detected in the composite samples was 10.9 ppb. The highest annualized mean concentration of alachlor in finished water was recorded in Columbus, Ohio, and ranged from 1.3 to 1.4 ppb.

Existing data on alachlor residues in surface water indicate that the risk from drinking water sources supplied by surface water will generally not exceed a range of 2×10^{-6} to 4×10^{-6}. The Agency believes this level of risk is reasonable given the benefits of continued use of alachlor products, and not proposing regulatory action under FIFRA on alachlor residues in surface water.

The Agency plans to propose a Maximum Contaminant Level (MCL) for alachlor under the Safe Drinking Water Act in the near future. These regulations would require the treatment of drinking water which contains alachlor residues in excess of the MCL, thereby maintaining the level of risk from exposure at reasonable levels.

Some of the measured annualized mean concentrations may continue to be of concern to the Agency, however. The levels recorded in Columbus, Ohio, for example, may be higher than the levels the Agency will consider acceptable.

The Agency is therefore soliciting comments on other measures which might be taken under FIFRA to reduce or prevent contamination of surface water by alachlor. Some measures, such as soil incorporation, have been examined by the Agency, but are not being proposed at this time because the Agency believes these measures may compound the problem of ground water contamination.

Additional measures which might be considered under FIFRA include additional label restrictions on use, site specific or localized measures which might be imposed if the levels of alachlor exceed the MCL or reach some action level, and monitoring requirements. The Agency is interested in receiving comments on the effectiveness and impact upon agricultural practices of these and other measures, their potential impact on ground water contamination, and the societal costs and benefits of imposing these measures upon the agricultural community as opposed to requiring CWS to treat drinking water containing alachlor levels above the MCL.

C. Determination of Benefits

EPA has conducted an analysis to assess the benefits associated with the continued use of alachlor. The methodology and results of this analysis are described in more detail in the Alachlor Technical Support Document.

1. Methodology

EPA has evaluated the economic impacts of the cancellation of alachlor and the resulting user shift to alternative weed control programs. The suitability of alternatives to alachlor was determined on the basis of effectiveness, cost, and market availability. Only currently registered pesticides that would control similar weed species were considered to be available as alternatives.

The analysis of economic impacts contained in the TSD resulting from modifying the terms and conditions of the registration is based on changes in production costs and crop yields, as well as possible grower shifts to other enterprises. Impacts were estimated for the grower/user level, commodity markets and the consumer.

2. Summary of Results of Analysis

The benefits of alachlor were assessed in terms of economic impacts which would result if the chemical were cancelled. Such an assessment provides a baseline estimate of the value of alachlor, as currently registered and used, to the agricultural community. It also provides a worst case assessment of the economic impact if all alachlor users were to switch to alternative pest control measures as a result of the Agency's proposed regulatory action, an outcome the Agency believes is extremely remote. On the contrary, as indicated in the discussion below, the Agency believes that its proposed regulatory action will have minimal impacts on the use and value of alachlor, and that the loss to the agricultural community would be significantly less than if alachlor were unavailable.

Cancellation of all uses of alachlor is estimated to result in first year losses at the farm level of $510 to $759 million, which represents both increased costs of weed control and decreased value of production. It is projected that the burden of the loss of alachlor would be largely borne by the farmer, with about one-third of the burden shifted to the consumer. In addition, a cancellation could result in decreased exports of agricultural products. The overall benefits' loss to society could range from about $302 to $508 million the first year. Overall losses to consumers of food products affected are expected to be nominal.

A brief summary of the estimated economic impact for cancellation of each use is provided below. A more detailed discussion of the economic impacts is found in the TSD.

a. *Corn.* The largest use of alachlor is on corn, which represents 63 percent of the total annual usage. Alachlor is used on approximately 26 million acres of corn, or 35 percent of the U.S. corn crop. The primary alternative to alachlor is metolachlor. Metolachlor is not as effective as alachlor; thus, it may have to be used with other herbicides, such as triazines. Average weed control costs could increase by $1.50 per acre for alachlor users. Yield losses of 3.9 to 7.3 bushels per acre with an average loss of 4.8 bushels per acre could occur initially. These yield losses are expected to decrease to approximately one bushel per acre after about 10 years. If alachlor is cancelled for use on corn, the initial annual loss to users would be approximately $318 to $552 million. User losses could decrease to $125 to $138 million after metolachlor-tolerant corn fully penetrated the market over 10 years. These losses, in aggregate, represent about 1 percent of the expected value of overall corn production. These impacts could be large enough to force a shift of a portion of corn acres out of corn production and into other uses of the land. The estimated losses are based on increased production costs, value of production losses, and decreased deficiency payments.

b. *Soybeans.* The second largest use of alachlor is on soybeans, which represent 28 percent of the total annual usage. Alachlor is used on about 13.5 million acres of soybeans, or about 21 percent of the U.S. soybean crop. Metolachlor is the primary alternative to alachlor in soybeans with additional herbicides and/or cultivations used under some conditions. The use of alternatives could increase average weed control costs by about $8.00 per acre for alachlor users. Yield reductions of 3.5 to 5 bushels per acre could occur on about 18 percent of those acres currently treated with alachlor. The cancellation of alachlor use on soybeans could result in annual losses to users of $153.6 to $159.5 million (U.S. EPA, 1986). This represents increased production costs of $113 million and decreased value of production of $40.6 to $46.5 million. These losses, in aggregate, represent less than 2 percent of the expected value of soybean production and about $1,150 to the typical soybean producer. If alachlor is cancelled, projections are

that domestic soybean production will not be profitable for several years until markets adjust.

c. *Peanuts.* Over 90 percent of the alachlor use on peanuts is applied as a cracking stage treatment. Metolachlor is the only herbicide that could be used as a substitute. Alachlor is a more effective product in that it gives better control of broadleaf weeds and does not retard peanut yields. With the introduction of metolachlor, peanut yield losses of 14 to 17 percent could occur in the Southeastern region. The cancellation of alachlor could result in user losses of about $35 million (U.S. EPA, 1986). It is estimated that consumers could have losses of about $37 million.

d. *Dry beans.* Dry beans represent less than 1 percent of total alachlor usage. If alachlor is cancelled, equally effective alternatives exist for some regions of the country, and less effective alternatives exist for others. The loss of alachlor could result in annual losses of $0.4 million to $1.5 million. These losses include increased production costs of $12.74/acre to alachlor users.

e. *Grain sorghum.* Alachlor is used on about 1.4 million acres of grain sorghum which represent about 8 percent of U.S. planted acres. It is estimated that the cancellation of alachlor use on grain sorghum would have little if any impact to users. Metolachlor, the currently registered alternative, appears to be the preferred herbicide for use on grain sorghum.

f. *Sweet corn or popcorn.* Current information indicates that about 300,000 acres of sweet corn and popcorn, which represent about 25 percent of the total acreage for these crops, are treated with alachlor. Partial budgeting was used to estimate the impacts of a loss of alachlor on sweet corn and popcorn. The cancellation of alachlor could result in losses of $3 to $10 million to alachlor users. Weed control costs could increase about $300,000 with value of production losses of $2.8 to $9.6 million. On a per acre basis, this could represent losses for farmers of about $9.00 to $32.00. Available information indicates that the losses could be borne largely by the farmer with little passed on to the consumer.

g. *Sunflowers.* Less than 1 percent of the sunflower crop is treated with alachlor for weed control. It is estimated that the loss of alachlor could result in minor annual losses. Alternatives to alachlor include trifluralin, EPTC, and pendimethalin.

h. *Cotton.* Alachlor is currently used on about 30,000 acres of cotton which represent less than one percent of the U.S. planted acres. The cancellation of alachlor use on cotton could result in losses of about $160,000 to users.

i. *Green peas.* Limited quantities of alachlor are used on green peas. Metolachlor has comparable grass control, while alachlor and propachlor have an added advantage in that they can be used on soils with a higher organic content.

j. *Lima beans.* Alachlor is currently used on about 6,000 to 9,000 acres of lima beans, or about 10 to 14 percent of U.S. planted acres. The cancellation of alachlor use would result in little if any efficiency losses to society.

k. *Ornamentals.* Alachlor is registered for use on selected woody ornamentals. The Agency was unable to find any indications of use of alachlor on ornamentals.

D. Determination of Regulatory Position

1. Proposed Regulatory Actions

Based on the information summarized above and discussed in greater detail in the Alachlor TSD, the Agency has determined that use of alachlor as currently registered poses unreasonable adverse effects on human health or the environment, and that certain modifications to the terms and conditions of registration for alachlor products are required to bring these products into compliance with the statutory standard for registration. Based on the risk/benefit assessment summarized in Unit III.D.2 below, the Agency has determined that with these modifications to the terms and conditions of registration, the use of alachlor would not be expected to cause unreasonable adverse effects on human health or the environment. Therefore, in order to avoid cancellation, registrations for alachlor products must be modified to include the following terms and conditions:

a. *Label changes.* The following language must appear on the label of all alachlor products:

i. *Restricted use.*

• Restricted Use due to oncogenicity. For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicators' certification.

ii. *Health warning.*

• The use of this product may be hazardous to your health. This product contains alachlor which has been determined to cause tumors in laboratory animals.

iii. *Restriction on application.*

• The use of a closed mixing/loading system is required to be used by all mixer/loaders and/or applicators who treat 300 acres or more annually.

b. *Aerial application.* Aerial application may be reinstated on the alachlor label with the following additional label restriction:

• Human flaggers prohibited. Aerial application may be performed using mechanical flaggers ONLY.

The Agency is continuing to review risks related to exposure to alachlor residues in ground water and certain foods, and may propose additional regulatory measures to mitigate these exposures after receipt and review of additional data currently being developed.

2. Basis for Proposed Regulatory Actions

a. *Restricted use classification.* Classification of alachlor as a restricted use pesticide will increase the level of protection afforded to users of the product. Certified applicators are trained in safe methods of using pesticides. Untrained users are less likely to be aware of the hazards, both to humans and to the environment, of using alachlor.

The impact of this requirement would be minimal. Approximately 65 percent of all commercial and private farmers who use alachlor are already certified under State certification programs, according to data provided by the registrant.

Private farmers would comprise the majority of the remaining uncertified group. The cost to each farmer of obtaining certification would be minimal; some States do not charge a fee to private farmers for certification. The costs of additional certification and training attributable to this proposed measure would be largely borne by the States. The incremental cost to the States of providing certification and training pursuant to this requirement would be minimal.

Commercial applicators who use alachlor are most likely already certified due to their usage of other restricted use pesticides, and would incur no additional costs under this proposal.

The Agency has determined, therefore, that the reduction in risk which would be achieved by this requirement outweighs the costs.

b. *Restriction on application.* Studies have demonstrated that the use of closed mixing/loading systems can substantially reduce exposure to some pesticides. EPA expects that use of a closed mixing/loading system will reduce exposure to alachlor by fortyfold. This estimate is based on the registrant's experience with the use of its shuttle system, a type of closed mixing/loading system which was developed by the registrant in 1985.

Approximately 40 percent of the farms using alachlor apply it to 300 or more acres annually. The Agency assumes that most of these large farms already use closed mixing/loading systems, and therefore expects this requirement to have minimal impact.

c. *Prohibition of human flaggers.* Human flaggers face a substantial risk, either directly or through drift, of being exposed to alachlor because of the nature of aerial application and changing wind conditions. The Agency has determined that the reduction in risk to human flaggers outweighs the cost of requiring the use of mechanical flaggers during aerial application.

IV. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA will transmit copies of this Notice, a draft Notice of Intent to Cancel and the support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the proposal, the Agency may not issue the Notice of Final Determination sooner than 60 days after sending the documents to the Secretary and the Panel. In addition, EPA must publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination. If neither the Secretary nor the Panel comments within 30 days, EPA may issue the Notice of Final Determination at the end of that period without awaiting the expiration of the 60-day period.

B. Intrastate Products

Pursuant to 40 CFR 162.17, EPA hereby notifies producers of all alachlor products registered solely for intrastate sale and distribution that they are required to submit a complete application for Federal registration. These applications must be submitted within 60 days of the date on which this Notice is published in the **Federal Register** or the date on which the intrastate producer receives a copy of this Notice, whichever is later. If an intrastate producer fails to submit a timely application, EPA will consider his Notice of Intent to Apply as an application for Federal registration for purposes of the review described below.

EPA will review all applications submitted. If EPA decides, in light of comments received in response to this Notice, to continue in its decision to issue a final notice allowing continued use of alachlor products under certain circumstances, EPA will notify intrastate producers of that decision and allow them at least 30 days in which to make changes that would allow EPA to approve the application for Federal registration. If the application has not been corrected in the prescribed manner within the period allowed, the application may be denied. On the other hand, if EPA issues a final notice cancelling the registrations of alachlor products, that notice will also include a final notice of denial for all applications for Federal registration of intrastate pesticide products containing alachlor for uses subject to that notice.

Under FIFRA section 3(c)(6), the issuance of a denial notice entitles an applicant, or other interested person with the concurrence of the applicant, to request an adjudicatory hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed below in Unit IV.C.1.

C. Procedures for Responding to Notice of Final Determination

1. Hearing Request

Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of alachlor products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications for failure to comply with the requirements listed in Unit III.D of this notice. Under FIFRA, such persons must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent to Cancel or Notice of Denial or of its publication in the **Federal Register**, whichever is later. As EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial, a hearing request must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted and a hearing is initiated, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled, or in the case of intrastate products, the application would be finally denied by operation of law 30 days after the final Notice was issued. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in any existing stocks provision included in the final notice.

2. Amendment of Registration or Application

Registrants who would be affected by any final decision to cancel the registrations of alachlor products unless the terms and conditions of the registrations are modified may avoid cancellation, without requesting a hearing, by filing an application for an amended registration that contains the label modifications detailed in the Notice of Final Determination. This application must be filed within 30 days of receipt of the final notice, or within 30 days of publication of the final notice, whichever occurs later. Similarly, applicants for a registration that would be subject to the final notice would have to file an amended application for registration within the applicable 30-day period to avoid denial of the application.

It should be noted that registrants (and applicants) are not required to request a hearing or to amend their registrations (or applications) at this time in order to be allowed to to continue to sell and distribute their products within this period.

V. Public Comment Opportunity

The Agency is providing a 60-day period to comment on this Notice and on the Alachlor TSD. The Agency is particularly soliciting comments on the issues discussed in Unit III above. Comments must be submitted by December 8, 1986. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS**, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–30000/44B. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding alachlor. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice

under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP–30000/44B) for the Alachlor Special Review. This public docket includes (1) this Notice; (2) any other notices pertinent to the Alachlor Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other Notice regarding alachlor submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on alachlor; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: September 30, 1986.

John Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 86–22833 Filed 10–8–86; 8:45 am]

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Federal Register

Wednesday
October 8, 1986

Part VI

Office of Personnel Management

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Combined Federal Campaign (CFC)

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing interim regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations are intended to be consistent with the restrictions placed on OPM by section 204 of Title II of H.R. 4515, the Urgent Supplemental Appropriations Act, 1986 ("the Act"). They will provide a system for administering the fall 1986 charitable solicitation campaign to be conducted by Federal personnel in their Government workplaces and set forth groundrules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign. These regulations by their terms apply to subsequent solicitations as well, but no decision has been made as to the arrangements that will be made for the fall 1987 campaign and beyond. These regulations are issued on an emergency basis so that the fall 1986 CFC can proceed as expeditiously as possible, and yet still comply with the terms of the Act. OPM issues this interim rule without prejudice to its right or duty further to modify or revise the rules in the event of supervening direction from the President, a court, or the Congress.

OPM is also amending 5 CFR 110.201(b) to add the Office of Management and Budget assigned control number for information collection requirements in 5 CFR Part 950.

DATES: Interim rules effective on October 8, 1986. Comments must be received on or before November 7, 1986.

ADDRESS: Send or deliver comments to Mark Barnes, Acting General Counsel, Office of General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jerry Barrett, (202) 632–5564.

SUPPLEMENTARY INFORMATION:

NAACP III

Over 2 years ago, on Friday, April 13, 1984, OPM published a notice in the Federal Register, 49 FR 14752, of proposed revision to the regulations that govern the CFC. These revisions were proposed in order to comply with the decision of the United States District Court for the District of Columbia in *NAACP Legal Defense and Education Fund, Inc. v. Devine*, 567 F. Supp. 401 (D.D.C. 1983), *affirmed*, 727 F.2d 1247 (D.C. Cir. 1984), *rev'd sub nom. Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* — U.S. —, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985) (*NAACP III*). That decision invalidated, as unconstitutional, those provisions of Executive Order 12404, 48 FR 6685 (Feb. 9, 1983) that sought to establish the Combined Federal Campaign as a means to provide financial support for traditional human health and welfare charities and to end its subsidization of legal defense and political advocacy organizations, among other organizations. On appeal to the United States Court of Appeals for the District of Columbia Circuit, the Court of Appeals affirmed the District Court's judgment. The United States Supreme Court, in 1985, reversed the decision of the United States Court of Appeals for the District of Columbia Circuit. The Supreme Court decided that Executive Order 12404 was valid on its face, i.e., that the President could constitutionally exclude nontraditional charities from participating in the CFC for the reasons stated in the Order. The Court also observed that the question of whether the President could issue the Executive Order if he in fact had reasons for doing so, other than the ones set out in the Order, had not been briefed or argued before the Court, and that it was not deciding this question. It did, however, indicate that the plaintiffs were free to pursue this issue on remand, if they so chose.

NAACP IV

In September of 1985, after *NAACP III* had been remanded to the district court by the Supreme Court, the original plaintiffs in *NAACP III* filed an amended complaint in the District Court seeking to litigate this issue of alleged "impermissible motive" on the part of the President. *NAACP Legal Defense and Educational Fund, Inc. v. Horner*, No. 83–0928 (D.D.C. filed September, 1985) *(NAACP IV)*. *NAACP IV* asserted the following causes of action:

- E.O. 12404 "was adopted in order to provide a basis to suppress the communication of plaintiffs' views because the defendants and other government officials disagree with those views, in violation of the First Amendment"
- E.O. 12404 "vests unrestrained, standardless discretion in the government officials supervising the conduct of the Campaign which permits its arbitrary and capricious application by those officials."
- E.O. 12404 has been applied in an arbitrary manner "by defendants and their agents" in order to exclude plaintiffs from the CFC although organizations that engage in "closely similar activities, which seek to affect public policy and government actions in the same manner as defendants have claimed is forbidden by the Executive Order, or which do not in fact provide direct health and welfare services, are admitted to and allowed to remain in the Combined Federal Campaign."

In addition to this lawsuit, a new civil action was filed at the suggestion of the District Court. *Planned Parenthood Federation of America v. Horner*, No. 86–1367 (D.D.C. filed May 19, 1983).

District Court injunction

As the *NAACP IV* and the *Planned Parenthood* litigation are closely related, the two cases were consolidated for purposes of discovery and the preliminary injunction discussed below. Discovery began, but as it proceeded and the start of the Campaign drew near, plaintiffs in *NAACP IV*, joined by Planned Parenthood, moved for an injunction that would permit them to participate in the CFC for the fall of 1986. This motion was granted with respect to the *NAACP IV* plaintiffs, and on May 30, 1986, Judge Joyce Hens Green of the United States District Court for the District of Columbia issued a preliminary injunction and ordered, among other things, that—

> defendant Constance J. Horner, the Office of Personnel Management, and her agents, including the local Federal Coordinating Committees, be and they hereby are enjoined from excluding plaintiffs . . . from participation in the Combined Federal Campaign on the basis of section (2)(b)(1)–(3) of Executive Order No. 12,353, as amended by section 1(b) of Executive Order No. 12,404, or section 950.30[3](b)(1)(i), (iv)–(v), and 950.303(b)(2)–(3) of the regulations implementing those Orders, 51 Fed. Reg. 11,668 (April 4, 1986)(to be codified at 5 C.F.R. Part 950), pending a determination by this Court, pursuant to the remand of the United States Supreme Court and the Court of Appeals for this Circuit, whether such provisions are the product of unconstitutional discrimination

The Government successfully argued for an expedited appeal of Judge Green's ruling. A hearing on this appeal was had on July 17, 1986.

The 1986 appropriations Act.

Before this hearing took place, on July 2, 1986, the President signed into law the Urgent Supplemental Appropriations Act, Fiscal Year 1986. Section 204 of the Act is an amendment offered by Representative Steny Hoyer. Section 204 reads as follows:

> None of the funds appropriated by this Act or any other Act shall be used for preparing, promulgating or implementing new regulations dealing with organization participation in the 1986 Combined Federal Campaign other than repromulgating and implementing the 1984 and 1985 Combined Federal Campaign regulations, unless such regulations provide that any charitable organization which participated in any prior campaign shall be allowed to participate in the 1986 campaign.

As a result of this legislation, the United States Court of Appeals for the District of Columbia Circuit requested that the parties to the appeal from the entry of the injunction referred to above, also consider and brief the issue of whether the appeal had been rendered moot by the enactment of the Act.

Recent court action

After receiving the briefs requested and after oral argument on July 17, 1986, the Court of Appeals, on July 22, 1986, dismissed the Government's appeal from Judge Green's injunction, vacated the injunction, and remanded the case with instructions to dismiss.

Decision to republish the 1984 CFC regulations

Faced with this situation, the Administration determined that the Government had few options with respect to this year's CFC. Notwithstanding OPM's publication of CFC regulations far in advance of the beginning of the fall Campaign, the fast approaching deadline for the beginning of the Campaign necessitated that an interim solution once again be sought. It is important that long-term planning for the future shape of the CFC not delay the necessary preparations for this fall's Campaign. The relief of the needy should be everyone's foremost concern at this point and the decision to repromulgate the 1984 CFC regulations guarantees that this fall's Campaign will be run as smoothly and efficiently as possible, in light of recent legislative and judicial developments.

Differences between these rules and the 1984 rules

These interim rules are virtually identical to the 1984 CFC rules, with the exception of minor technical changes. The 1984 requirement that voluntary agencies adopt the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* has not been retained. One of the salutary changes made in our April 4, 1986, CFR regulations was to permit the use of generally accepted accounting principles and this welcome improvement has been incorporated in these interim rules.

Justification for interim rules

Under 5 U.S.C. 553(b)(3)(B), OPM finds that good cause exists for waiving the general notice of proposed rulemaking:

- Time is short. It would be impossible to undertake the notice-and-comment rulemaking previously engaged in given the deadlines that are upon us. For that reason, and in light of the legislative and judicial developments outlined above, an emergency situation exists.
- We published virtually identical rules in 1984 after complying then with the rulemakng requirements of the Administrative Procedure Act. Approximately 3,000 comments were received in response to the notice of proposed rulemaking published on April 13, 1984, and these were carefully analyzed and responded to in 1984, all as set out in the regulatory record of that time.
- The issues raised by these rules and the origin of these rules are already well known to virtually all of the interested parties in and out of the Government.
- Unless otherwise directed by the President or the Congress, OPM does not plan to use these rules in future Campaigns.

Scope

This part governs all fundraising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States at their places of work or duty. Thus, it is applicable to civilian and uniformed personnel in all Executive departments and agencies throughout the world.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order 12291, Federal Regulation, because it will not result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency is Being Considered

These regulations are being published in response to the necessity to prescribe rules for the CFC that conform to recent legislative and judicial developments, in particular the passage of the Act, described above.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under Executive Order 12353 and 12404. The objective of these regulations is to provide for a system of administering the annual charitable solicitation drives among Federal civilian and military employees in a Combined Federal Campaign, and to set forth ground rules under which charitable organizations receive gifts through the CFR, in the light of recent legislative and judicial developments.

(3) Number of Small Entities Covered Under Rule

The rule applies to all organizations in the United States qualified under 26 U.S.C. 501(c)(3).

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The interim rules would significantly decrease reporting, recordkeeping, and other requirements as compared to the existing rule. Under the principle of self-certification, each affected entity would determine itself whether it meets the requirements set forth in the rule. This would significantly decrease—indeed practically eliminate—any regulatory or paperwork burden, especially as compared with former requirements. Charitable organizations will also not need to present detailed documentary evidence and register with the Government to receive funds, so that charities will be subject to no additional requirements by the Government. The interim rules will make it optional for local Federal Coordinating Committees to dispense with publication of official lists of qualified charities.

In place of the Government-subsidized listing of charitable agencies and descriptions of their purpose, charities may then undertake the cost of their own advertising, which results in income to themselves. It is neither unjust nor a departure from present

practice in charitable campaigns outside the Federal workplace to have the beneficiaries of fundraising bear all or some of its costs. It cannot be argued that by removing a Government subsidy the Government is adversely affecting any small entities, as it is merely restoring the *status quo ante* for some organizations—those who were previously beneficiaries—and minimizing the Government's regulatory burden on all charitable entities in return.

In doing this, the rule complies and conforms with the purposes of the Regulatory Flexibility Act to minimize the regulatory burden on small entities.

To facilitate the presentation of charitable organizations' messages to Federal employees, the Government again opens its internal U.S. mail system to these charitable agencies. By permitting direct mail communication, cheap unit cost advertising is made available. Moreover, the regulations specifically allow for joint appeals and brochures, by federations of charitable organizations, or other combinations of charitable organizations, to allow efficient cost-sharing by small entities that could result in greater volumes of contributions. The interim rule merely removes the Government from the regulatory process to the maximum extent possible—removing its subsidy and providing an efficient means by which entities may appeal to Federal employees for contributions to their charities. The decision as to which charities shall receive funds is left wholly in the hands of the Federal employee, where it belongs. The rules assure the free choice of the employee, rather than guarantee any entity a right to a subsidized special appeal to the employee. Certainly, the Government has no obligation to subsidize what it need not regulate, nor to guarantee monetary gain; but it merely must allow access to compete for the employee's donation. This is provided by the rule. As a result, a regulatory burden is lifted, and a means is substituted that gives all entities, small and large, cost-efficient and unregulated access to the audience of Federal employees.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting with the Rule

By using the definition of the Internal Revenue Code under 26 USC 501(c)(3), existing rules, familiar to all because of the pervasive influence of the tax laws, are utilized to avoid unnecessary duplication, overlap, and conflict with other Government regulations.

(6) Differing Compliance or Reporting Requirements

At the present time, the only appropriate alternative to the interim rule is the formerly existing one, now proscribed by the Hoyer Amendment. Obviously, that rule can no longer be used. To do so, and still comply with the Hoyer Amendment, would be to create an unnecessarily confusing amalgam of new regulations. This would be confusing and disruptive. Descriptions of each charity previously provided are impractical since there simply are too many 501(c)(3) organizations in the United States to list them all with verbal descriptions. In addition, the new regulations place many fewer reporting requirements and give more flexibility in setting timetables for local Campaigns. In all, the new rules allow more equal competition between small and large entities.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As has been noted, the new rules would simplify compliance and reporting requirements for small entities as compared with existing rules.

(8) Use of Other Standards

Appropriate alternative standards are not available that would impose less burdensome regulations.

(9) Exemption of Small Entities From Coverage

Exemptions from coverage for small entities is not practical, since few restrictions exist for either large or small entities. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities. Indeed, the new regulations greatly advance the purposes of the Regulatory Flexibility Act by significantly reducing regulatory burdens on the public.

List of Subjects

5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Parts 110 and 950 of Title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 110 is added to read as set forth below and the authority following all the sections in Part 110 are removed:

Authority: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

2. Section 110.201(b) is amended to numerically add the applicable OMB control number for Part 950 to read as follows:

§ 110.201 OMB control numbers.

* * * * *

(b) * * *

5 CFR citation	OMB control number
* * * * *	
Part 950	3206-0131

3. Part 950 is revised to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—Administration and General Provisions

Sec.

Subpart B—Organization and Functional Responsibilities

Subpart C—Campaign Arrangements for Voluntary Agencies

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983).

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) The terms "voluntary agency," "voluntary health and welfare agency, "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings.

(1) Delivery of health care to ill or infirm individuals;

(2) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(3) Health research for the benefit of ill or infirm individuals;

(4) Delivery of education, training, and care to physically and mentally handicapped individuals;

(5) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(6) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(7) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(8) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(9) Protection of families that, on account of need, poverty, indigence, of emergency, are in long-term or short-term need of family, child-care, and maternity services; child and marriage counseling; foster care; and guidance or assistance in the management and maintenance of the home and household;

(10) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(11) Relief of needy, poor, and indigent adults and of the elderly;

(12) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(13) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs;

(14) Lessening of the burdens of government with respect to the provision of any of the foregoing services; or

(15) Any other health and welfare service rendered by a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3).

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or her delegate;

(2) "Employee" shall mean any person employed by the Government of the United States of any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fundraising program established and administered by the Director pursuant to Executive Order 12353, as amended by Executive Order 12404, and any subsidiary units of such program.

(4) "Community" shall mean a community that is defined either by generally recognized bounds or by its relationship to an isolated Government installation;

(5) "Direct contributions" shall mean gifts, in cash or in donated in-kind material given by individuals and/or non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" or "PCFO" means the organization in a local Combined Federal Campaign that has been selected and charged pursuant to §950.509 to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined Fund Organization for _____ (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Assigned campaign periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is normally limited to 6 weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(b) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for allocation of contributions in accordance with specific designations by donors. Solicitations are conducted exclusively by Federal personnel and only Federal personnel are solicited.

(c) *Decentralized operations.* The federalism principle shall guide

Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(d) *Solicitation methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) Off-the-job solicitation. Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(f) Prohibited discrimination. The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fundraising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. The following activities are not in accord with the intent of Federal fundraising policy and, in the interest of preventing coercive activities in Federal fundraising, are not permitted in Federal fundraising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100 percent participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

Director, U.S. Office of Personnel Management. Under Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fundraising policies and procedures in the Executive branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, she makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this part for the conduct of fundraising activities in Federal agencies.

§ 950.203 Program administration.

(a) Federal agency heads. The head of each Federal Executive department and agency is responsible for:

(1) Seeing that voluntary fundraising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fundraising program with the Federal agency;

(3) Assuring full participation and cooperation in local fundraising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fundraising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) Fundraising Program Coordinators. The responsibilities of Federal agency Fundraising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fundraising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fundraising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their state and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fundraising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations; and

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal Coordinating Committees.

(a) Summary of duties and powers. When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fundraising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) Authorized local Federal Coordinating Committee. Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fundraising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) Employee union representation. In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) Fundraising responsibilities. Within the limits of the policies, procedures, and arrangements made nationally, the fundraising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee

(i) Names a high-level chairman for the authorized Federal campaigns;

(ii) Provides lists of Federal activities and their personnel strength;

(iii) Cooperates on interagency briefing sessions and kick-off meetings; and

(iv) Supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Federal Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fundraising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) Principal Combined Fund Organization. The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will receive money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) Communication and resolution procedures through the Director, Office of Personnel Management. Each local Federal agency head will receive fundraising directions through his Federal agency channels and will raise questions that pertain to fundraising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fundraising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fundraising situation.

(g) Integrity of local Federal Coordinating Committee. A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) Universal eligibility. All health and welfare charities organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) are eligible to receive designations in any local CFC. The local Federal Coordinating Committee shall permit all such agencies to have an opportunity, as provided in the rules of the Campaign, to receive contributions from Federal employees.

(i) Local lists. At its option, a local Federal Coordinating Committee may publish a list of health and welfare charities eligible to receive contributions through the local CFC. Any such list shall consist of all entities qualifying under section 950.101(a) that meet the provisions of section 950.211(m), that certify that they meet all applicable provisions of Subparts D and E of this part, and that make timely application for inclusion on the local list.

(j) Notice of local list; open meeting. Where the local Federal Coordinating Committee elects to publish a list, it shall make a public announcement to that effect not later than 60 days prior to the commencement of the local campaign. The announcement shall invite applications from all qualified entities for inclusion on the local list and shall specify a date by which applications must be submitted to the local Federal Coordinating Committee. If such a process is provided, then local eligibility decisions shall be made at an open meeting of the local Federal

Coordinating Committee upon giving reasonable notice to interested parties.

(k) Notice of LFCC decisions. The local Federal Coordinating Committee shall give applicants reasonable notice, in accordance with local CFC practice, of the dispositions made of their applications.

(l) Appeals. Applicants denied listing may petition the local Federal Coordinating Committee to reconsider its denial. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within 10 days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within 10 days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of section 950.525(e), to the Director, whose decision shall be final.

(m) Standards of eligibility for local listing. Any entity qualifying under § 950.101(a), notwithstanding its location or geographic area of service, may receive a gift designate to it in writing on a prescribed CFC pledge card by an individual donor. To be manageable, however, the optional local list, if any, as permitted under § 950.211(i), must be limited to charities that actively render their services in the local CFC area. Accordingly, any local list will include only entities that have a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in the light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community.

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency. Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for inclusion on the local list in each local campaign area of the Combined Federal Campaign.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fundraising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through state of local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fundraising methods.

(*a*) The methods used by voluntary agencies in public fundraising shall be either federated or independent. A national federated group shall meet the same eligibility criteria as a voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fundraising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(*b*) An independent campaign is one conducted by a local unit of a national voluntary agency through its own fundraising organization, or by a local nonaffiliated agency which otherwise meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) On-the-job solicitation. In order to have only one on-the-job solicitation by Federal personnel and of Federal personnel, i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign on behalf of charitable purposes in conformance with the policies and procedures prescribed in this part.

(b) Campaign arrangements established nationally. Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this part.

(c) Number of solicitations. Not more than one on-the-job solicitation of Federal personnel on behalf of charitable purposes will be made in any year at any location, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) Responsible conduct.—In the event a voluntary agency fails to adhere to the requirements or to the policies and procedures of the Federal program,

its privilege to receive gifts through the Combined Federal Campaign may be withdrawn by the Director at any time after due notice of the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic area.* The 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *Overseas area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Federated community.* A federated community is a geographical location within the domestic area where a federated fundraising program exists. In a federated community, recognized national voluntary agencies may join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests" shall be recognized for participation in a federated community only as participating members of the local United Way, fund, or chest.

(d) *Local non-affiliated voluntary health and welfare agency.* Local voluntary agencies that provide health and welfare services in the local area, and otherwise meet the criteria of this part, may be non-affiliated.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized federated groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the requirements in these regulations shall be recognized in its local campaign area as the federated group consisting of, and representing, its member voluntary agencies that also meet these requirements. Certifications as to the requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the standards under this part, shall be recognized as the federated group consisting of, and representing, their respective member voluntary agencies that also meet all requirements of this part.

(3) Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all requirements of this part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised, in accordance with the principles set forth at § 950.401. In a local campaign where an optional official list of voluntary agencies is published, pursuant to § 950.521(e)(2), then federated groups and unaffiliated voluntary agencies applying for local listing shall seasonably furnish to the local Federal Coordinating Committee their respective written certificates of compliance with all requirements of this part. In all other cases, such certificate shall be required as provided in § 950.521(e)(2)(v).

(b) *Local federated agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency.

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is prohibited. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of federated area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) Overseas campaign. —(1) DOD Overseas Combined Federal Campaign. (i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a 6 week period in the fall. Any national voluntary agency that the local Federal Coordinating Committee for the DOD Overseas CFC determines, in its discretion, most likely meets the definitions and standards set forth in this part for the Principal Combined Fund Organizations shall be eligible to be designated as the Principal Combined Fund Organization for the DOD Overseas CFC. The American Red Cross, the International Service Agencies-Overseas, the National Health Agencies, the United Service Organization, and such other federated groups that meet the standards under this part shall be authorized privileges on behalf of their member voluntary agencies that also meet all requirements of this part. The local Federal Coordinating Committee for the DOD Overseas CFC shall designate the Principal Combined Fund Organization for the Overseas Campaign, which may be the National Voluntary Organizations Campaign Committee.

(ii) Contributors to the DOD Overseas Combined Federal Campaign designate their gifts to one or more agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing percentage, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local voluntary agency campaigns.* The heads of overseas offices and installations may, at their discretion, permit their military and civilian personnel to solicit each other on behalf of local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DOD overseas Combined Federal Campaign period. The standards in this part will be used as guidelines. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional participation by certain civilian agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-base health and welfare activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this part. Dual solicitation conflicts with the objective of a combined campaign and is not authorized. Accordingly, this privilege shall be extended only under the following circumstances:

(a) *Family quarters on military installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installation at the descretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public entrances of federal buildings and installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976, as amended, or other applicable Government legal authority.

Subpart D—Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These requirements are established to ensure that the funds contributed by Federal personnel will be used for the stated purposes of the recipient voluntary agencies. The Office of Personnel Management acknowledges that voluntary agencies are regulated, as to the integrity of their operations and finances, by State and local governments, by the federated groups of which they may be members, and by the discipline of the marketplace. OPM and local Federal Coordinating Committees will therefore be guided by the principle of self-certification and will accord a presumption of validity to the written representations of voluntary agencies and federated groups that the requirements of this part are satisfied.

§ 950.403 General requirements for national agencies.

(a) *Type of agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of operations.* Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposed of the voluntary agency.

(c) *National scope.* A national voluntary agency is one that:

(1) Is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates;

(2) Has earned goodwill and acceptability throughout the United States, particulary in cities or communities within which or near which are Federal offices or installations with large numbers of personnel; and

(3) Has national scope, that is, scale, goodwill, and acceptability, which may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

(d) *Type of campaign.* Approval will be granted only for fundraising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements for national agencies.

(a) *Corporate and tax status.* A voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in section 950.101;

(2) That is voluntary and broadly supported by the public, meaning

(i) That it is organized as a not-for-profit corporation or association under the laws of the United States, a state, a territory, or the District of Columbia;

(ii) That it is classified as tax-exempt under 26 U.S.C. 501(c)(3), and is eligible to receive tax deductible contributions under 26 U.S.C. 170; and

(iii) That, with exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign;

(3) That is directed by an active board of directors, a majority of whose members serve without compensation;

(4) That it adopts and employs generally accepted accounting principles and was audited by a certified public accountant in the year immediately preceding any year in which it applies for admission to, or certifies its eligibility to receive donations from, the Combined Federal Campaign;

(5) That can demonstrate, if its fundraising and administrative expenses is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(6) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(b) *Fundraising practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising; and must permit no general telephone solicitation of the public.

(c) *Reports (1) Annual report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined reports.* Voluntary agencies that represent more than one subunit must prepare a combined annual financial report to the general public in accordance with generally accepted accounting principles. The

combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(d) *Reporting by American Red Cross.* For purposes of this part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations and certification to this effect by local chapters is not required.

Subpart E—The Local Combined Federal Campaign

§ 950.501 Local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope. Each voluntary agency shall certify to its compliance with these criteria, or shall have such certification submitted on its behalf by the federated group, if any, of which it is a member, in accordance with the principles of internal integrity set forth in § 950.401.

(b) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

§ 950.503 Participation in Federal campaigns by local unaffiliated agencies.

Arrangments shall be made by the Central Receipt and Accounting Point to distribute contributions to local unaffiliated voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

§ 950.505 Responsibility of local Federal Coordinating Committees.

Each local Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The local Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFR as uniform fundraising method.* The Combined Federal Campaign is the only authorized fundraising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fundraising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-participation.* In the event that any voluntary agency does not follow these provisions of this part for participation in a local CFC, fundraising privileges in local Federal establishments are forfeited during that fiscal year.

(c) *Red Cross participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in the CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in the CFC, they are not authorized to have a separate campaign in Federal offices or installations during the fiscal year involved, except in the case of an emergency of disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in areas of fewer than 200 Federal employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe that it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The Principal Combined Fund Organization.

The local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this part. From among the federations with national scope, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depends on public subscriptions for support; and that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful campaign.

(a) *Qualifications of PCFO.* In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies;

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part; and

(5) Whether the organization meets the requirements specified in sections 950.401, 950.403, and 950.405.

(b) *Obligations of PCFO.* An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the

decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in her discretion she finds these pledges are not fulfilled.

(c) *Contents of PCFO application.* Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved percentage for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable requirements specified in this part;

(7) Percentage, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part.

(d) *Right to receive donations.* Federated groups, member agencies of federations, and other voluntary agencies shall be eligible to receive designations.

(e) *Reimbursement of PCFO.* The Principal Combined Fund Organization shall provide a form for the contributor to indicate any amounts he may wish to designate to affiliated and unaffiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) *Approval of PCFO.* The percentage, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) *Deemed designated donations.* All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly printed in a distinctive typeface in ink of a distinctive color on the face of each pledge card, which shall also state the name of the federated group that is the Principal Combined Fund Organization in that local Campaign.

(h) *PCFO report.* The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee and other interested parties within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged;

(2) Number of contributors;

(3) Amounts designated to each participating federated group and voluntary agency;

(4) Amount designated to the Principal Combined Fund Organization;

(5) Amounts of gifts and pledges cancelled and returned; and

(6) Costs of administering the campaign, including the Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action steps by the local Federal Coordinating Committee.* The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full- or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC groundrules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic groundrules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this subpart. However, any modification of groundrules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) Campaign name. The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1984 San Antonio Area Combined Federal Campaign."

(2) Campaign period. The solicitation period may be any time between September 1 and November 30.

(3) Campaign area. The exact geographical area to be covered by a local campaign will be determined by the Director, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the

Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) *Contributor's information leaflet.* The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution by it. The leaflet should contain no text stating or implying that any Government official will determine the distribution of any gifts deemed designated to the Principal Combined Fund Organization.

(b) *Pledge form.* Several boxes will be provided on the pledge form so that donors may indicate their choices, if any, to contribute to one or more voluntary agencies or federations. A minimum of three boxes, each no less than 1½ inches in length and no less than ⅛th of an inch in height, will be printed on the face, and on all copies, of the pledge form. Separate designation slips are not authorized under any circumstances. The pledge form must be arranged so that each Federal employee receives the pertinent CFC information and the pledge card as a single package (as examples, inserted in a slot, or a pocket in the contributor's information leaflet). In addition to the statement required by § 950.509(g), a statement in bold and distinctive type will be printed to read: "Any health and welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated in the box provided on this card." In the event that a donor attempts to contribute to an entity that is not a voluntary agency within the meaning of § 950.101(a), that is not tax-exempt under 26 U.S.C. 501(c)(3), or that cannot, with minimal reasonable effort, be identified or located, then the donation shall be cancelled and the funds collected, if any, shall be promptly returned to the donor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall local combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark by which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local campaigns. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The Receipt and Accounting Point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction of "shrinkage" and of the approved percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an audit must be performed by a certified public accountant. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 905.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to conform to this part or to any other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through Federal agency personnel, or occupational health, or other appropriate units, and not the CFC coordinators. Voluntary agencies are encouraged to publicize their activities

outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through media and other outlets, and to communicate with Federal personnel in writing through the United States Mail addressed to them at their Federal workplaces, as long as these do not interfere with Federal Government activities. Federated groups participating in a local campaign are authorized and encouraged to publish informational brochures accurately describing the organizations and activities of their respective member voluntary agencies, and to send such brochures through the United States Mail to Federal personnel at Federal workplaces. Local Federal Coordinating Committees are futher authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the local CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal Government activities. Nothing herein shall be construed to require a local Federal Coordinating Committee to distribute or arrange for the distribution of any material other than the contributor leaflet and pledge form required by this part.

(c) A single Contributor's Information Leaflet, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials releasd as a part of the campaign must inform employees of their right to make a choice. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials.

(1) *Contributor's leaflet.* (i) This leaflet will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by § 950.513. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge form.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(iv) Every leaflet shall also contain the following statement: "All contributions not designated to specific voluntary agencies, or specific federated groups, shall be deemed to have been designated to the Principal Combined Fund Organization, which shall, through its eligibility committee of local citizens, choose charities to receive these funds based upon its best perception of community, national and international needs."

(v) The contributor information leaflet must also state that any health or welfare agency organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3), is eligible for a contribution; that the contributor must clearly identify the beneficiaries and amounts of his gifts; that his gifts are tax deductible; that he has the right not to be influenced improperly in making his decisions regarding the making or withholding of contributions in the CFC; and that he must make his gifts, if any, using the prescribed CFC pledge form. Other than the name of the Principal Combined Fund Organization, which must be stated in the contributor information leaflet in he same limited manner required by § 950.509(g) with respect to the pledge form, and shall not otherwise be stated, the contributor information leaflet shall not contain the name of any voluntary charity nor shall it otherwise contain any material that might influence the donor's choice of particular beneficiaries. The leaflet may contain general words of encouragement of the support of private charity, including quotations of the President of the United States, the Director, other Federal officials, and prominent personalities, provided that no personality who is not a Federal official shall be featured in the leaflet if he would be, under all the circumstances, reasonably associated by a donor with any particular voluntary agency.

(2) *Optional local list (LFCC list).* At its option, the local Federal Coordinating Committee may include a list of voluntary agencies. This will strictly be at its own option if, in its view, it would facilitate donor understanding. If this option is chosen, the following rules apply:

(i) The leaflet will list the voluntary agencies approved by the local Federal Coordinating Committee, with only the title of the organization printed and without any statement about, or on behalf of, any agency. Opposite the name of each voluntary agency, a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of an agency or agencies to which they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge form. Each voluntary agency that is a member of a federated group shall be entitled, at its local option, to have that group's initial noted in parantheses following the name of the voluntary agency.

(ii) The listing of voluntary agencies shall be exclusively in strict alphabetical order, beginning with the letter "A," by name of voluntary agency.

(iii) Federated groups shall be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "campaign groups," with their respective identification numbers. The federated group that is the Principal Combined Fund Organization shall be so identified.

(iv) The following statement shall be printed, following the list of federated groups, in bold letters and distinctive type: "The above list is not an exhaustive list of the voluntary health and welfare charities to which you may designate all or part of your contribution. The list is illustrative only. Any health or welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated on the blank space provided on the pledge card. You must write the full and correct name of the charity that you designate as the recipient of your gift. Please be sure that your writing is legible. If you

write in the name of an unqualified organization or of an organization that cannot be located, or if your writing cannot be read, then your pledge or gift will be cancelled and returned to you."

(v) The Principal Combined Fund Organization upon receiving pledge forms containing designations to specified agencies whose names are written-in by contributors shall request each agency so designated to certify in writing that it is a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) and that it complies with all standards of integrity of operations and reporting required by this part. Such certification by an employee-designated beneficiary agency shall be sufficient basis for the Principal Combined Fund Organization to proceed with the payment process. This process of self-certification comports with the principles set forth at § 950.401.

(3) *PCFO report in lieu of optional local list*—(i) *Contents.* In the event, and only in such event, that the local Federal Coordinating Committee elects not to provide an optional local list as permitted by § 950.521(e)(2), the Principal Combined Fund Organization shall provide a report of all organizations that were designated by donors or by the Principal Combined Fund Organization to receive funds from the local campaign held in the preceding year. Such report shall consist of a roster of the beneficiary organizations, grouped by category of service, listed within each category in strict alphabetical order, and accompanied by a description (not to exceed 25 words and figures) of each organization's charitable programs; an organization may, at its election, note in parentheses after its name the initials of the participating federated group, if any, to which it belongs. Such report shall clearly state that it is a list of the recipients of all valid donations made in the immediately preceding campaign; that it is not an exhaustive list of organizations eligible to receive gifts through the CFC; and that the presence or absence of the name of any organization implies neither governmental approval nor governmental disapproval of any group or program. Such report shall conform, in all respects not inconsistent with the express provisions of this subsection, with the requirements of fairness and the safeguards against coercion and undue influence that are set forth in § 950.521(e)(1).

(ii) *Transmittal or communication of report.* The Principal Combined Fund Organization shall endeavor to transmit a copy of such report individually to each Federal employee in the local campaign area; in the event, however, that such form of distribution would not be cost effective or timely or would be impracticable, then the Principal Combined Fund Organization shall provide such report to Federal employees in the local campaign area by, at a minimum, publishing such report at least once within the 10 days immediately preceding the commencement of the local campaign in a newspaper of general circulation within the local Federal community; making such report available to each key-worker to assist individual donees; and maintaining copies of the report available for public inspection during reasonable business hours at every office of the Principal Combined Fund Organization in the local campaign area.

(iii) *LFCC approval.* The Principal Combined Fund Organization shall submit the report to the local Federal Coordinating Committee for its review and approval prior to any publication or issuance thereof.

(4) *Pledge form and payroll withholding authorization.* (i) A copy of the pledge form shall be used to inform the Receipt and Accounting Point for the local area of the designation decisions. The format for the pledge card is prescribed by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1984 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's social security number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) *Other campaign materials.* Other campaign materials that are authorized include:

(1) *Chairman's guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's guide.* Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's report envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous campaign items.* Contributor's receipts, window stickers, posters, progress charts, awards, etc;

(5) *Publicity items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) *National materials.* National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. She must approve all material prior to use.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management Pay Administration regulations in Part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment.

(This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1 bi-weekly, with no restriction on size of increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the 1-year withholding period; or

(ii) On death, retirement, or separation of allotter from the Federal service, whichever is earlier.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the 1–year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved percentage for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and

(ii) Arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFR arrangements.

(b) Each local Federal Coordinating Committee shall notify the Office for Regional Operations of OPM of its campaign areas, chairman's name, address, and telephone number, and the address of its Receipt and Accounting Point.

(c) All chairman of local Federal Coordinating Committees shall furnish reports of campaign results to the Office of Regional Operations of OPM no later than January 15 of each year. OPM will furnish a reporting format to local Federal Coordinating Committees prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Returned or cancelled gifts or pledges;

(5) Amount of undesignated receipts received by Principal Combined Fund Organization;

(6) Campaign costs; and

(7) Narrative summary evaluation of CFC arrangement based upon campaign experience. Copies of the report will be

furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and participating federated groups. A copy will be made available for inspection by participating voluntary agencies and Federal employees.

(d) All local activites will be coordinated with the national campaign under guidance and procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) *Appeals.*

(1) *Substantial question; burden.* Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion and of going forward shall be borne by the appellant.

(2) *Time.* An appeal may be dismissed as untimely unless it is received by the Director within the 10 days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken.

(3) *Contents.* Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. Except in extraordinary circumstances, the Director shall not consider any evidence or argument that was not first presented to the local Federal Coordinating Committee.

(4) *LFCC, other response.* The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the 5 days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest.

(5) *Director's authority.* The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in her sole discretion, and on her own motion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending her review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so, in the manner and within the time directed by the Director.

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Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for ground control at metal and nonmetal mines. These revisions upgrade provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, provide alternative methods of compliance, and reduce recordkeeping requirements.

EFFECTIVE DATE: December 8, 1986, except 30 CFR 57.3461 which contains information collection requirements which are under review at OMB.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, or Yvonne Johnson, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This final rule is part of MSHA's comprehensive review of its metal and nonmetal safety and health standards. MSHA announced the availability of a preproposal draft on March 11, 1983 (48 FR 10593), and published a proposed rule in the **Federal Register** on March 6, 1984 (49 FR 8368). Three public hearings were held in June 1984. After studying the comments received, MSHA has prepared this final rule. It is codified in 30 CFR Parts 56 and 57. Part 56 contains the requirements for surface metal and nonmetal mines. Part 57 contains the requirements for both underground and surface areas of underground metal and nonmetal mines.

The final rule arranges the standards in Subpart B of Parts 56 and 57 into related groups: Part 56, (1) Mining Methods; (2) Scaling and Support; and (3) Precautions; and Part 57, (1) Scaling and Support; and (2) Precautions. Definitions pertaining to Subpart B precede the standards. In the following discussion, the designation "56/57" indicates that the standard applies to both Parts 56 and 57.

To aid in comparing the existing standards with the new standards, this document includes a derivation table and a redesignation table which cross-reference the old numbers with new numbers.

II. Discussion and Summary of the Final Rule

A. General Discussion.

Fall of ground has historically been a leading cause of injuries and deaths in metal and nonmetal mines. From 1978 through 1984 there were 639 fatalities in metal and nonmetal mines. Of these, 66, or approximately 10% were caused by falls of roof, face, rib, side or highwall. Of all injuries occurring in metal and nonmetal mines, almost 3% or 384 injuries per year, were caused by fall of ground. Control of ground is made uniquely difficult because of the variety of conditions encountered and the changing nature of the forces affecting ground stability at any given operation. Nonetheless, technological advances are helping to reduce the hazards associated with unsecure ground.

In developing the final rule, the agency considered several approaches including the requirement for a general ground control plan standard. Instead of a general plan standard approach, the agency has developed specific performance requirements which more appropriately address the hazards related to ground control and provide for the safety of persons working in metal and nonmetal mines. The standards are performance-oriented, but are sufficiently specific to provide the mine operator with the necessary guidance.

Previously there were 16 standards in Part 56 and 23 standards in Part 57. Under this final rule, there are 9 standards in Part 56 and 10 standards in Part 57. Changes made to the existing standards are discussed fully below. The final rule continues to provide an essential level of safety and protection for workers at metal and nonmetal mines.

A comprehensive rock bolt standard was developed for the final rule. The standard addresses the quality of rock fixtures and installation, allows new technology to be introduced in a safe manner, and reduces recordkeeping requirements. Six existing standards on this subject were revised and combined.

In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining public. The agency has also clarified existing requirements and, where possible, included alternative compliance provisions.

Two new definitions and one revised definition are included. Five existing definitions are deleted.

B. Deletions

The final rule deletes five standards dealing with rock bolting sequence, shaft support, torquing tools and as applicable to underground mines, wall, bank or slope stability. Existing standard 57.3058, rock bolting sequence, requires that rock bolts be installed as soon as practical after an area is exposed. This standard was revised and proposed as § 58.3301. However, the standard is no longer necessary and is deleted since standard 56/57.3200 provides that ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area.

One commenter suggested deleting existing standard 57.3029, proposed as § 58.3160, shaft support. The existing standard required that pillars and other support systems have sufficient strength to support operating shafts. Should any situation arise where a shaft is improperly supported, it would be covered by § 56/57.3200 of the final rule. MSHA has determined that existing standard 57.3029 is unnecessary for that reason, and has deleted it from the final rule.

The proposed rule included standard 58.3362, torquing tools, which modified existing standard 57.3033, addressing the availability of calibrated torque meters or wrenches. The requirement that calibrated torque meters or wrenches be available is deleted in the final rule because section 56/57.3300 requires that the tension of rock bolts be accurately measured by torque tests. Since calibrated torquing tools must be available in order to accurately check the torque, safety is not diminished by deletion of the previously existing standard, 57.3033. At the same time, possible introduction of new technology is facilitated by not specifying the type of tool that must be used.

The proposed rule divided existing standard 57.3022, examination of ground conditions and ground control practices into three standards: 58.3401, examination of ground conditions; 58.3402, examination of ground control practices; and 58.3200, correction of hazardous conditions. Commenters recommended that the portions of this standard proposed as 58.3402 be deleted because of redundancy with other standards. MSHA agrees. Section 56/57.3401 in the final rule appropriately addresses the needed ground examinations. The final rule must be flexible enough to accommodate the variety of situations which may arise while assuring the safety of persons

working in the mine. Circumstances may occasionally require the attention of a supervisor at a particular area of the mine, preventing a visit to a work place during a shift. Requiring inspection during each visit by a supervisor, as was proposed by MSHA in 58.3402 could actually discourage supervisory visits.

The final rule revises and combines existing standards 56.3001, wall, bank and slope stability; and 56.3003, bench width and height, because both relate to wall, bank or slope stability. The scope of these standards has been limited to surface mines and covered in § 56.3130 (wall, bank, and slope stability). Section 56/57.3200 (correction of hazardous conditions), would apply should similar hazards exist at surface areas of underground mines. Therefore, §§ 57.3001 and 57.3003 relating to underground mines have been deleted.

C. Definitions

The final rule adds definitions for "rock fixture" and "rock burst", revises the definition of "travelway", and deletes the definitions of "scaling", "active workings", "barricaded", "shaft", and "working place". The terms "rock fixture" and "travelway" are defined in 56/57.3000. "Rock burst" is defined in § 57.3000.

Several commenters requested that MSHA add a definition for "rock bolt". MSHA defined the term in the proposed rule. However, other commenters suggested use of the term "rock fixture" instead of rock bolt, stating that a broad definition for "rock bolt" could lead to confusion. MSHA believes the term rock fixture is appropriate for the wide variety of rock support or strengthening systems now in use, as well as those which may be developed in the future. The final rule defines the term rock fixture. Rock fixture encompasses all devices, whether threaded or unthreaded, used to support the ground. It is MSHA's intent to include all types of rock bolts and rock stabilizing devices in the scope of the definition of "rock fixture".

The final rule contains a new definition for "rock burst." A definition is necessary for clarification and to distinguish rock burst from the term "outburst", a mining phenomenon associated with high pressure gas in some metal and nonmetal mines. For purposes of this subpart, the agency is restricting the application of "rock burst" to bursts resulting from stress build-up within the rock structure, as distinguished from bursts resulting from pressurized mine gases. In response to commenters who suggested further clarification, MSHA has added the sentence, "Rock burst does not include a burst resulting from pressurized mine gases." Further, MSHA has included the words "violent" and "large" to distinguish a rock burst from "popping," a phenomenon mentioned by commenters which is generally considered insignificant and may not be related to hazard-producing conditions.

"Scaling" is defined in the existing definitions as removal of insecure material from a face or highwall. MSHA's final rule deletes the definition of scaling since it is commonly understood in the mining community.

The existing standards define "active workings" for underground mines only (Part 57). One commenter stated that the term active workings, which appeared in the proposal for surface and underground mines (Parts 56 and 57), was inappropriate to surface mining. MSHA has determined that a definition for active workings is not necessary in the final rule since it has revised relevant standards to include specific language relating to "places where persons work or travel in performing their assigned tasks." The definitions for "barricaded", "shaft", and "working place" are deleted since the terms no longer appear in Subpart B.

D. Section-by-section discussion

The following section-by-section analysis discusses the final rule and its effect on existing standards.

Mining Methods

Section 56.3130 Wall, bank, and slope stability. This final rule provision combines and revises existing standards 56.3001 and 56.3003 because both relate to wall, bank or slope stability. The scope of this standard is limited to surface mines, since the specific hazard addressed would be expected only at surface mines. The underground standard, § 57.3200, would be applicable should a similar hazard exist at surface areas of underground mines. Therefore, §§ 57.3001 and 57.3003 relating specifically to underground mines have been deleted.

Several commenters objected to the phrase "assure wall, bank, and slope stability" used in the proposal, stating that it implied that an operator would be required to guarantee that a fall of ground would not occur. One commenter suggested the use of the term "maintain" rather than "assure". MSHA has adopted the suggestion and has used "maintain" in the final rule.

A commenter stated that the proposed standard appears to be directed toward things rather than persons. MSHA has retained the standard, since it is designed to address the hazard presented to persons from a failure of wall, bank, or slope. The scope of the standard, however, is limited to places where persons work or travel in performing their assigned tasks.

Another commenter felt that the proposed standard could be enforced only after an accident occurred. Methods of detecting instability are available and can be the basis for preventing the occurrence of injuries. The final rule states the intent of the standard in performance-oriented language and identifies the hazard by using the word "stability". Several commenters suggested that the language should be more specific. MSHA believes that the language must be broad enough to apply to the wide variety of conditions encountered.

When benches are included in the "mining method," there must also be a maintenance system selected to prevent the deterioration of the ground from creating a fall of ground hazard. When required, the benches must be able to serve as catch benches. MSHA agrees with the commenter who stated that may factors contribute to the determination of bench width and height. The standard provides a performance-oriented approach without restrictions on width and height of benches, other than those necessitated by the equipment selected for the maintenance function.

Section 56.3131 Pit or quarry wall perimeter. The final rule revises existing standard 56/57.3002. The scope of this standard is limited to surface mines, since the specific hazard addressed would be expected only at surface mines. Other standards such as 56/57.3200 would be applicable should a similar hazard exist at surface areas of underground mines.

The fall of materials from the perimeter of a pit or quarry wall, often caused by weather or nearby mining activity, can present a serious hazard to workers. The existing standard requires that loose, unconsolidated material be stripped at least 10 feet from the top of pit or quarry walls and that the material be sloped to the angle of repose. Commenters objected, stating that in certain cases where unconsolidated ore is mined, stripping would be impractical and would add to the cost of mining without producing an increase in safety. MSHA agrees. The final rule allows the option of either stripping or sloping to correct the hazard. When stripping is used, the area must be stripped back for a minimum of 10 feet from the perimeter. This distance would provide protection from falling material for miners working in the pit or quarry.

In addition, the rule requires that other perimeter fall hazards besides loose, unconsolidated material be corrected. For example, when a large boulder or over-hanging tree on the perimeter poses a hazard, it would have to be removed. The particular method of correcting or eliminating the hazard would be left to the discretion of the operator, thereby providing flexibility for compliance. The perimeter must be checked at the frequency specified for in 56.3401 (examination of ground conditions) to make certain it is free of other fall of ground hazards.

Scaling and Support

Section 56/57.3200 Correction of hazardous conditions. This provision combines and revises portions of existing standards 56/57.3004, 56/57.3005, and the third sentence of 57.3022. The standard restricts work or travel where a fall of ground hazard exists. The standard has broad application and would apply wherever such a hazard is present. Safe means for scaling are addressed in standards 56/57.3201 and 56/57.3202. Examination of ground is addressed in standard 56/57.3401.

Several commenters felt that the existing language which requires a barricade where hazardous ground conditions exist was not appropriate under all circumstances. MSHA agrees and adopts a "barrier" concept as suggested by one commenter. These barriers have openings to allow access for persons who are correcting the hazardous conditions. Examples of barriers would be piles of muck, piles of large boulders or a timber barricade. Reflective hazard warning tape would not be a sufficient barrier to impede passage. The proposed standard used the phrase "conspicuous obstruction" to describe the barrier. In response, several commenters suggested that the phrase "conspicuous obstruction" was not clear, and that the term "barrier" be used. For clarity, MSHA adopts the term "barrier" in the final rule.

A commenter suggested that a barrier was not necessary while work was being performed to correct the hazard. MSHA agrees and requires the posting of warnings only when the area is unattended. MSHA has revised the standard to require that the area be restricted from inadvertent travel by posting and a barrier be installed to impede unauthorized entry when the area is left unattended. The agency believes it is necessary to require signs and barriers since they serve complimentary functions. Signs provide a warning of the hazardous condition and identify the nature of the hazard. The barrier impedes entry in the event the signs are not heeded. Barriers in these situations are often built of mined material which may not immediately be recognized as a restriction to entry. The signs will clarify the purpose of the barrier.

Section 56/57.3201 Location for performing scaling. This section revises existing standard 56/57.3006, which covers safe locations for scaling, and specifies that persons shall "approach from above" areas to be scaled. The final rule provides for the use of alternative techniques which may provide a safer approach than those strictly performed from "above". The new language also clarifies that a "safe" location is one which will not expose persons to injury from falling material.

It is important to have the person scale from a location which takes into account exposure to injury from falling material. The standard requires that either scaling be performed from a location that does not expose persons to this hazard, or other protection from falling material be provided.

Some commenters suggested that scaling includes an inherent risk of injury when performed in certain areas, such as in raises. In confined areas, such as raises, where long scaling bars cannot be used, the final rule allows for other appropriate protective measures to be taken.

Section 56/57.3202 Scaling tools. This section revises existing standard 56/57.3051. The final rule addresses hazards covered by the use of improper scaling tools.

A commenter suggeste deletion of proposed rule language which prohibited use of picks or other short tools under circumstances where their use places the person in danger from falling material. The performance-oriented language of the final rule incorporates this suggestion without lessening the effectiveness of the standard. In developing the final rule, MSHA has recognized two distinct hazards related to the scaling process: injury from falling materials; and injury from use of an improperly designed bar. The final rule addresses these hazards by requiring that a scaling bar be of a length and design that will allow the removal of loose material and will not expose the person performing this work to injury. Bars designed with two sharp ends to prolong useful life have caused severe lacerations and other more serious injuries when the bar has been struck by falling material. The new provision of the standard would preclude this type of design. The standard would allow a scaling bar that is blunt on the end held by the user.

Section 56/57.3203 Rock fixtures. This section revises and combines existing standards 56/57.3053, 56/57.3054, 56/57.3055, 56/57.3056, 56/57.3057. It adds language which addresses the quality of rock fixtures and their installation, allowing for the introduction of new support systems.

Several commenters objected to the application of this standard to surface operations. It is appropriate for the standard to apply to both surface and underground mines because rock fixtures are being used for support in both types of mines. MSHA recognizes that not all mines use rock fixtures. Where they are not used, this standard would not apply.

The proposed rule incorporated by reference the American Society for Testing and Materials' publication, "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432–83). Several commenters objected to the incorporation by reference, stating that it would unnecessarily lock-in technology. Commenters also expressed concern that the mine operator would be required to have the same knowledge of design criteria as the bolt manufacturer. In response to these concern MSHA has revised the final rule.

The final rule requires that a mine operator obtain a certification from the manufacturer that rock bolts and accessories were manufactured and tested in accordance with ASTM F432–83. This is in accord with established industry practice in which manufacturers routinely furnish such information to the mine operator when requested to do so in a contract or purchase order. ASTM F432–83 is a widely recognized technical standard which, in addition to specifying exacting manufacturing criteria, provides for such a certification. The certification must be made available upon request to the Secretary or an authorized representative. Detailed knowledge of manufacturing criteria is not necessary for compliance; a showing of the certification document will be sufficient. The ASTM F432–83 document may be obtained from the publishers: The American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. It may also be examined at any Metal and Nonmetal Mine Safety and Health District or Subdistrict Office.

The final rule permits use of rock fixtures and accessories not addressed in ASTM F432–83 provided they are effective. Paragraph (b)(1) allows for the use of rock fixtures that are currently

being used successfully under similar conditions.

It is essential that the quality of rock fixtures be maintained at an effective level. As technology evolves, new techniques and materials must assure this level of reliability and effectiveness. For this reason, the agency believes that untested or inadequate fixtures should not be used in metal and nonmetal mines. The final rule provides this assurance while maintaining maximum flexibility for the operator. Paragraph (b)(2) allows the use of any type of rock fixture that is shown to be effective through testing in the mine. The testing would be conducted in an area with similar conditions to those where the fixtures are expected to be used. Until testing demonstrates the effectiveness of these fixtures, access to the area must be controlled to permit entry only by those persons necessary for the testing process.

The final rule provides that a plus or minus 0.030 inch tolerance be permitted in the size of finishing bits. Some commenters stated that the minus tolerance need not be addressed. Hole diameter at the anchorage zone is critical. An ovresized hole can decrease anchorage capacity by allowing expansion of the anchorage component beyond its intended configuration. An undersized hole can prevent proper setting of an expansion shell. In addition, the pressure generated by rock bolting machines can force a rock fixture into an undersized hole leading to possible damage of the fixture.

In addition to clarifying existing language relating to installing and testing rock bolts tensioned by torguing, the standard require torque tests on the first, the last, and every tenth bolt installed in each work area, rather than on every fourth bolt as currently required. This is more appropriate for the variety of conditions which exist in metal and nonmetal mines and provides the needed safety.

The final rule specifies the requirements for testing rock fixtures to determine proper installation. Under this section, mine operators would no longer be required to keep a record of tests, but instead would certify that tests have been conducted. The final rule also addresses the use of bearing plates and grouted material.

Certain language contained in the proposed standard has been deleted or revised where redundant. An example is the requirement to test torque "with a calibrated torque meter or torque wrench". It is unnecessary to specify the type of equipment since there is a requirement that the torque be accurately determined immediately after installation. Proper torquing is inherently dependent on the use of properly functioning tools. The proposed standard also required that the operator make the manufacturers' specification and installation instructions for rock bolts available to MSHA. This language is not necessary since these instructions are being furnished to MSHA when requested.

Section 57.3360 Ground support use. This provision revises and combines existing underground standards 57.3020, which deals with ground support use and 57.3026 which addresses hazards associated with timbering.

The circumstances which necessitate ground support have been clarified. Under the final rule, ground conditions and mining experience are the criteria for determining if support is required. The standard does not specify the type of ground support system to be used, only that it control the ground. When rock fixtures are used for support, stanard 56/57.3203, rock fixtures, would also apply.

The final rule requires that the support system be designed, installed, and maintained to control the ground and that damaged, loosened, or dislodged timbers used for ground support be repaired or replaced prior to any work or travel in the affected area of an underground mine. Under the final rule, changes to support systems would have to meet this performance requirement, making it unnecessary to require a demonstration of effectiveness.

Precautions

Section 56/57.3400 Secondary breakage. This provision revises existing standard 56/57.3050. It deals with the hazards associated with secondary breakage. It is important that the material be properly secured before starting breakage operations, and that the breakage be performed from a location that would not expose persons to danger.

Section 56/57.3401 Examination of ground conditions. This provision combines existing standards 56/57.3008, 56/57.3009, and 57.3022. The third sentence of existing standard 57.3022 is included in standard 56/57.3200. The final rule addresses examination of ground conditions by supervisors or designated persons and consolidates proposed standard 58.3401 (examination of ground conditions) and 58.3402 (examination of ground practices) into one standard.

MSHA's preproposal draft required supervisors to examine ground conditions during each visit of an "active working". Active workings were defined as "areas at, in or around a mine or plant where men work or travel." For each visit, even if on a daily basis, the supervisor would have been required to inspect the ground. Most commenters objected to this language as being too broad. Several indicated it might actually impede necessary supervisory visits to work places. The supervisors may be unprepared or have inadequate time to conduct an inspection of ground conditions along haulageways, travelways, or at the work place during such a visit. One commenter stated that ground conditions at production faces must be examined by supervisors on a daily basis.

In response to these commenters, the agency limited the application of this standard in the proposed rule to "working places", which was defined as "any area where work is being performed". Another commenter felt this language required "firebossing", or examining the mine each day for all types of hazards. The language of the final rule clarifies the agency's intent with respect to the nature of the examination. The final rule requires examination for loose ground in areas where work is to be performed prior to commencing work, after blasting, and as ground conditions warrant. Because ground conditions along haulageways and travelways do not change as rapidly as in areas where work is being performed, the final rule establishes at least weekly examinations, an appropriate timeframe for traveled areas.

Existing underground standard 57.3022 requires periodic examination of haulageways and travelways. Between February 1978 and December 1984, thirteen fatalities occurred in haulageway and travelway areas where ground fell on miners and the vehicles they were operating. Eleven of these fatalities occurred at surface mines, and two at underground mines. The frequency of periodic inspection of haulageways and travelways is clarified in the final rule as weekly or more often if changing ground conditions warrant.

Infiltration of water, air slaking, and vibration from blasting are principal causes of ground deterioration along underground haulageways and travelways. At surface operations, highwalls or banks adjoining travel routes could present ground fall hazards commonly caused by vibration from blasting and climatic conditions such as rain, snow, freeze, and thaw. The standard is broadened to also require examination of these areas on a weekly basis or more often if changing ground conditions warrant. Although all of the

forces which cause deteriorating ground conditions do not occur continually, their combined effect requires that a frequency of examination be established. Supervisors and other designated examiners commonly travel these routes on a daily basis. The weekly examination requirement will impose no unnecessary burden on mine operators but will provide the desired measure of safety for miners. More frequent examinations would be required only if conditions were such that safety could not be achieved by the weekly schedule.

Examinations may be done by appropriate supervisors or other designated persons experienced in examining and testing for loose ground who have been designated by the mine operator to perform the task. Since the qualifications for such persons are set out in the standard, the more general term "competent person", which appeared in existing 56/57.3008, is deleted from the final rule.

Section 56/57.3430 Activity between machinery or equipment and the highwall or bank. This section revises existing standard 56/57.3012. The scope of this standard has been limited to surface mines and surface areas of underground mines since the specific hazard addressed would occur only at surface areas. It addresses the need for clear paths of escape from fall of ground. Between 1978 and 1984, 11 surface fatalities occurred when miners were struck by falling ground while working between equipment and the highwall and bank.

MSHA adopts the suggestion of several commenters to allow travel where equipment breakdown requires the equipment operator to exit between the equipment and the pit wall or bank. In addition, the final rule changes the word "equipment" to "machinery or equipment" to clarify its intent.

Section 57.3460 Maintenance between machinery or equipment and ribs. This new provision addresses the seriousness of accidents which have occurred underground from falling material pinning maintenance personnel against the machinery or equipment. Maintenance workers may be called into an active mining area to repair equipment. While working between the equipment and the rib, fatalities have occurred when falling material pinned the employees against the equipment and restricted their escape route. Several commenters suggested that maintenance should be allowed if the area was checked and scaled as necessary prior to work. MSHA agrees with this suggestion and the final rule permits maintenance where the area has been tested and has been secured when necessary to assure safety. The word "equipment" has been changed to "machinery or equipment" to clarify the intent of the standard. Other editorial changes were also made for clarity.

Section 57.3461 Rock bursts. This provision revises existing standard 57.3035. It addresses reporting, detection, and control of rock bursts in mines where rock bursts have occurred. Although the rock burst phenomena has occurred primarily in the Coeur d'Alene district of Idaho, a burst carries a potential for disaster because it may strike in any area, and a large number of miners may be present. This standard requires that a rock burst be reported to MSHA within 24 hours so that the information may be immediately disseminated to other mine operators who have similar problems. This reporting requirement differs from the immediate reporting required in 30 CFR Part 50, in that it recognizes that rock bursts are distinguishable from outbursts, a term applicable to gassy mines. The final rule requires that rock bursts be reported upon the occurrence of any one of four conditions: withdrawals of miners, disruption of mining activity, impairment of ventilation, or impedance of passage. The standard also requires that a rock burst control plan be implemented and reviewed as conditions warrant. This plan is necessary to provide systematic evaluation and monitoring of critical conditions within the mine so that occurrences of rock bursts can be reduced. It is MSHA's intent that this information be used for the benefit of all mines subject to rock bursts. Editorial changes are also made to the existing standard.

The final rule replaces the requirement for a comprehensive rock burst detection plan with a requirement for a rock burst control plan. MSHA agrees with the comment that this change would provide for an overall plan to limit the effect of rock bursts, of which a detection plan may be only one aspect. Procedures such as mine planning, detecting, monitoring, and destressing may be included in the overall control plan.

MSHA recognizes that while current technology cannot eliminate rock bursts, they must be appropriately controlled. The final rule reflects this approach by requiring that the plan include measures to minimize exposure of persons to burst-prone areas. The final rule also contains a provision requiring that the plan be implemented within ninety days after a rock burst has occurred. Ninety days is sufficient time to evaluate the possible causes of the rock burst and develop a control plan for the future. The requirement that the plan be available to a representative of miners is consistent with the statutory intent that miners be aware of unique hazards, such as those associated with rock bursts, and actions to be taken in the event of such an occurrence.

The proposed rule specified updating of rock burst plans every 12 months, or more often as conditions or available technology warrant. The need for plan revisions is based upon the changing ground conditions as mining progresses without regard to specific time spans. The twelve-month requirement has therefore been deleted from the final rule.

E. Derivation Table.

The following derivation table lists the number of each standard in the final rule (New No.), the number of the standard in the proposed rule (Proposed No.), and the number of the old standard (Old No.).

DERIVATION TABLE

New No.	Proposed No.	Old No.
56/57.3000	58.3000	56/57.2.
56.3130	58.3130 (S)	56.3001 and .3003.
Removed	Removed	57.3001 and .3003.
56.3131	58.3131 (S)	56/57.3002.
Removed	58.3160 (U)	57.3029.
56/57.3200	58.3200 (G)	56/57.3004, .3005 and .3022
56/57.3201	58.3201 (G)	56/57.3006.
56/57.3202	58.3202 (G)	56/57.3051.
56/57.3203	58.3300 (G)	56/57.3053 through 56/57.3057.
Removed	58.3300 (G)	57.3058.
57.3360	58.3360 (G), and 58.3361 (U).	57.3020, and .3026.
Removed	58.3362 (U)	57.3033.
56/57.3400	58.3400 (G)	56/57.3050.
56/57.3401	58.3401 (G), and 58.3301 (G).	56/57.3008, .3009 and .3022.
56/57.3401	58.3402 (G)	57.3022.
56/57.3430	58.3430 (S)	56/57.3012.
57.3460	58.3460 (U)	None.
57.3461	58.3161	57.3035.

F. Redesignation Table

For the convenience of the readers, the following redesignation table cross-references the existing standard numbers (Old No.) with the standard numbers used in the final rule (New No.).

REDESIGNATION TABLE

Old No.	New No.
56/57.2	56/57.3000.
56.3001	56.3130.
57.3001	Removed.
56/57.3002	56.3131.
56.3003	56.3130
57.3003	Removed.
56/57.3004	56/57.3200.
56/57.3005	56/57.3200.
56/57.3006	56/57.3201.
56/57.3008	56/57.3401.
56/57.3009	56/57.3401.
56/57.3012	56/57.3430.

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Old No.	New No.
57.3020	57.3360.
57.3022	56/57.3200 and .3401.
57.3026	57.3360.
57.3029	Removed.
57.3033	Removed.
57.3035	57.3461.
56/57.3050	56/57.3400.
56/57.3051	56/57.3202.
56/57.3053	56/57.3203.
56/57.3054	56/57.3203.
56/57.3055	56/57.3203.
56/57.3056	56/57.3203.
56/57.3057	56/57.3203.
57.3058	Removed.
None	57.3460.

III. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the changes to its ground control standards for metal and nonmetal mines. The Agency has incorporated this analysis into the Final Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the final rule will neither result in major cost increases nor have an effect of $100,000,000 or more on the economy. Because the final rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives which minimize any adverse impact on small businesses. The final rule contains many alternatives to the existing regulations, some of which will especially benefit small mining operations. In addition, the final rule clarifies compliance responsibilities, adopts performance-oriented criteria, and reduces recordkeeping provisions.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final rule with the costs of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the total initial cost associated with the existing requirements amounts to approximately $90.6 million, compared to approximately $79.9 million for the final rule. Annual recurring costs associated with the existing standards are $90.3 million, compared to $79.8 million for the final rule. The initial and recurring costs associated with the elimination of hazards at the top of pit or quarry wall perimeters, the control of fall of ground hazards, and the examination of ground conditions constitute about 96% of the cost of the final rule.

The final rule represents an initial and an annual recurring cost reduction of 12% when compared to the existing standards. Small mines would receive an estimated 14% cost reduction. Small mines represent 86% of those mines affected by the final rule and incur about 51% of the cost of the final rule.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The final rule will not present a significant economic impact on a substantial number of small businesses under the criteria of the Regulatory Flexibility Act.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the final rule, the agency has also projected capital expenditures and recurring costs.

The primary benefit of the final rule is the improved protection for miners who are endangered by hazards related to falls of roof, face, rib, side, and highwall in metal and nonmetal mines. The final rule will reduce costs to the mining industry through alternative compliance methods without diminishing the safety of persons who work at the Nation's mines. For example, the final standard requiring that the top of the pit or quarry wall perimeters be stripped or sloped back, rather than stripped and sloped as required by the existing standard, reduces annual compliance costs by almost $7 million.

IV. Paperwork Reduction Act

The recordkeeping provisions in the existing standard concerning anchorage tests has been eliminated. The final rule requires the mine operator to certify that tests were conducted. The rock fixture standard includes certification of manufacturing parameters and imposes no recordkeeping burden on the mine operator. It would, however, be incumbent upon the fixture manufacturer to supply this certification to the purchaser upon request. However, since this certification is already a practice routinely followed by manufacturers who have adopted the relevant industry consensus standard, ASTM F432–83, the additional burden hours imposed by the final rule would be nominal. The existing standards require a "comprehensive" rock burst detection plan, whereas the final rule delineates requirements for a rock burst control plan. Since these provisions would affect fewer than ten mines, impact would also be minimal.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1219–0097.

V. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Ground control.

Dated: October 1, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

Part 56, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations, is amended as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. Subpart B of Part 56 is revised to read as follows:

Subpart B—Ground Control

Sec.

Subpart B—Ground Control

Authority: 30 U.S.C. 811

§ 56.3000 Definitions.

The following definitions apply in this subpart.

Rock fixture. Any tensioned or nontensioned device or material inserted into the ground to strengthen or support the ground.

Travelway. A passage, walk, or way regularly used or designated for persons to go from one place to another.

Mining Methods

§ 56.3130 Wall, bank, and slope stability.

Mining methods shall be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned

tasks. When benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes.

§ 56.3131 Pit or quarry wall perimeter.

In places where persons work or travel in performing their assigned tasks, loose or unconsolidated material shall be sloped to the angle of repose or stripped back for at least 10 feet from the top of the pit or quarry wall. Other conditions at or near the perimeter of the pit or quarry wall which create a fall-of-material hazard to persons shall be corrected.

Scaling and Support

§ 56.3200 Correction of hazardous conditions.

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.

§ 56.3201 Location for performing scaling.

Scaling shall be performed from a location which will not expose persons to injury from falling material, or other protection from falling material shall be provided.

§ 56.3202 Scaling tools.

Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing this work to injury.

§ 56.3203 Rock fixtures.

(a) When rock bolts and accessories addressed in ASTM F432–83, "Standard Specification for Roof and Rock Bolts and Accessories", are used for ground support the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactued and tested in accordance with the specifications of ASTM F432–83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Fixtures and accessories not addressed in ASTM F432–83 may be used for ground support provided they—

(1) Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

(2) Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c) Bearing plates shall be used with fixtures when necessary for effective ground support.

(d) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the required diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

(e) Damaged or deteriorated cartridges of grouting material shall not be used.

(f) When rock bolts tensioned by torquing are used as a means of ground support,

(1) Selected tension level shall be—

(i) At least 50 percent of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

(ii) No greater than the yield point of the bolt or anchorage capacity of the rock.

(2) The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

(g) When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand 150 foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

(h) When other tensioned and nontensioned fixtures are used, test methods shall be established to verify their effectiveness.

(i) The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Secretary.

Precautions

§ 56.3400 Secondary breakage.

Prior to secondary breakage operations, material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

§ 56.3401 Examination of ground conditions.

Persons experienced in examining and testing for loose ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed prior to work commencing, after blasting, and as ground conditions warrant during the work shift. Highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant.

§ 56.3430 Activity between machinery or equipment and the highwall or bank.

Persons shall not work or travel between machinery or equipment and the highwall or bank where the machinery or equipment may hinder escape from falls or slides of the highwall or bank. Travel is permitted when necessary for persons to dismount.

Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations, is amended as follows:

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

1. Subpart B of Part 57 is revised to read as follows:

Subpart B—Ground Control

Sec.
57.3000 Definitions.

Scaling and Support—Surface and Underground

57.3200 Correction of hazardous conditions.
57.3201 Location for performing scaling.
57.3202 Scaling tools.
57.3203 Rock fixtures.

Scaling and Support—Underground Only

57.3360 Ground support use.

Precautions—Surface and Underground

57.3400 Secondary breakage.
57.3401 Examination of ground conditions.

Precautions—Surface Only

57.3430 Activity between machinery or equipment and the highwall or bank.

Precautions—Underground Only

57.3460 Maintenance between machinery or equipment and ribs.
57.3461 Rock bursts.

Subpart B—Ground Control

Authority: 30 U.S.C. 811.

§ 57.3000 Definitions.

The following definitions apply in this subpart.

Rock burst. A sudden and violent failure of overstressed rock resulting in

the instantaneous release of large amounts of accumulated energy. Rock burst does not include a burst resulting from pressurized mine gases.

Rock fixture. Any tensioned or nontensioned device or material inserted into the ground to strengthen or support the ground.

Travelway. A passage, walk, or haulageway regularly used or designated for persons to go from one place to another.

Scaling and Support—Surface and Underground

§ 57.3200 Correction of Hazardous conditions.

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.

§ 57.3201 Location for performing scaling.

Scaling shall be performed from a location which will not expose persons to injury from falling material, or other protection from falling material shall be provided.

§ 57.3202 Scaling tools.

Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing the work to injury.

§ 57.3203 Rock fixtures.

(a) When rock bolts and accessories addressed in ASTM F432–83, "Standard Specification for Roof and Rock Bolts and Accessories", are used for ground support, the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Fixtures and accessories not addressed in ASTM F432–83 may be used for ground support provided they—

(1) Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

(2) Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c) Bearing plates shall be used with fixtures when necessary for effective ground support.

(d) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the required diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

(e) Damaged or deteriorated cartridges of grouting material shall not be used.

(f) When rock bolts tensioned by torquing are used as a means of ground support,

(1) Selected tension level shall be—

(i) At least 50 percent of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

(ii) No greater than the yield point of the bolt or anchorage capacity of the rock.

(2) The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

(g) When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand 150 foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

(h) When other tensioned and nontensioned fixtures are used, test methods shall be established and used to verify their effectiveness.

(i) The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Secretary.

Scaling and Support—Underground Only

§ 57.3360 Ground support use.

Ground support shall be used where ground conditions, or mining experience in similar ground conditions in the mine, indicate that it is necessary. When ground support is necessary, the support system shall be designed, installed, and maintained to control the ground in places where persons work or travel in performing their assigned tasks. Damaged, loosened, or dislodged timber use for ground support which creates a hazard to persons shall be repaired or replaced prior to any work or travel in the affected area.

Precautions—Surface and Underground

§ 57.3400 Secondary breakage.

Prior to secondary breakage operations, the material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

§ 57.3401 Examination of ground conditions.

Persons experienced in examining and testing for loose ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed, prior to work commencing, after blasting, and as ground conditions warrant during the work shift. Underground haulageways and travelways and surface area highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant.

Precautions—Surface Only

§ 57.3430 Activity between machinery or equipment and the highwall or bank.

Persons shall not work or travel between machinery or equipment and the highwall or bank where the machinery or equipment may hinder escape from falls or slides of the highwall or bank. Travel is permitted when necessary for persons to dismount.

Precautions—Underground Only

§ 57.3460 Maintenance between machinery or equipment and ribs.

Persons shall not perform maintenance work between machinery or equipment and ribs unless the area has been tested and, when necessary, secured.

§ 57.3461 Rock bursts.

(a) Operators of mines which have experienced a rock burst shall—

(1) Within twenty four hours report to the nearest MSHA office each rock burst which:

(i) Causes persons to be withdrawn;

(ii) Impairs ventilation;

(iii) Impedes passage; or

(iv) Disrupts mining activity for more than one hour.

(2) Develop and implement a rock burst control plan within 90 days after a rock burst has been experienced.

(b) The plan shall include—

(1) Mining and operating procedures designed to reduce the occurrence of rock bursts;

(2) Monitoring procedures where detection methods are used; and

(3) Other measures to minimize exposure of persons to areas which are prone to rock bursts.

(c) The plan shall be updated as conditions warrant.

(d) The plan shall be available to an authorized representative of the Secretary and to miners or their representatives.

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Defense Production Act Amendments of 1986. (Oct. 3, 1986; 100 Stat. 1117; 2 pages) Price: $1.00

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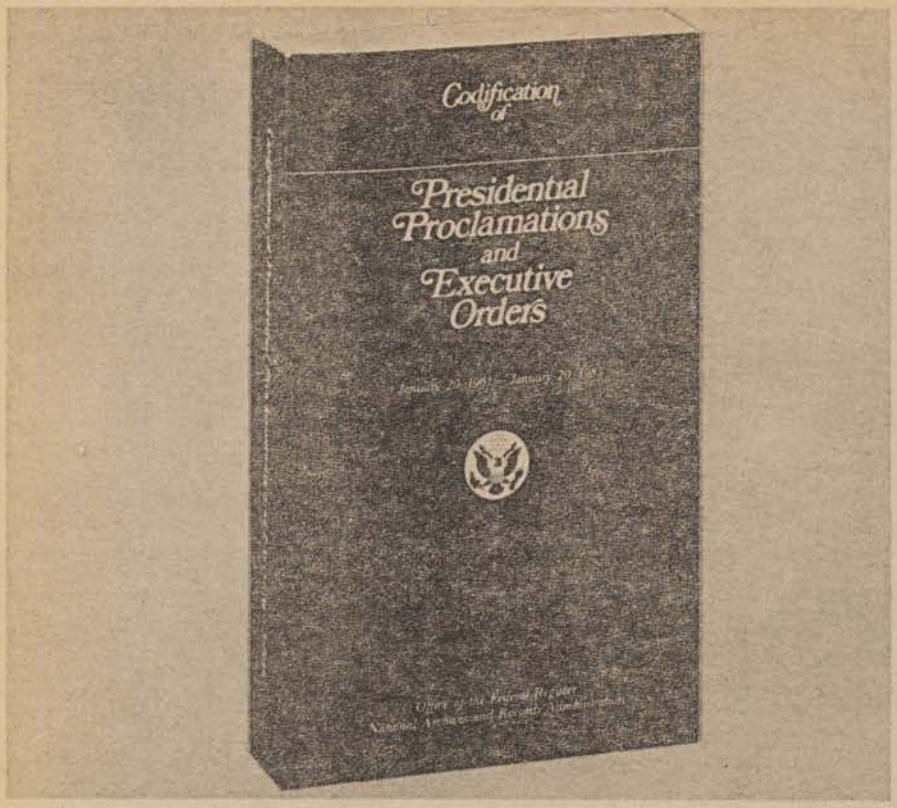

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